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POLITICAL ANNALS

OF THE

Preſent UNITED COLONIES,

FROM THEIR

SETTLEMENT

TO THE

PEACE of 1763:

Compiled chiefly from RECORDS, and authoriſed often by the Inſertion of STATE-PAPERS.

Il faut éclairer l'hiſtoire par les lois, et les lois par l'hiſtoire. — MONTESQUIEU.

By GEORGE CHALMERS, Eſq.

BOOK I.

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BOOK I.

BY GEORGE CHALMERS, Esq.

FROM THE

REVOLT OF THE UNITED COLONIES,

TO THE

ESTABLISHMENT OF THEIR INDEPENDENCE.

THE

PREFACE.

IF univerſal hiſtory be an agreeable ſubject, becauſe a natural curioſity is gratified, the annals of no portion of the empire of which we are members can be deemed unworthy of regard, ſince uſeful information is acquired. By inveſtigating the cauſes that have induced men to conſider different ſyſtems as either expedient or unwiſe, we acquire knowledge from the experience of others: By inquiring into thoſe circumſtances, which diſplay the nature of original inſtitutions, which trace the progreſs of laws, hiſtoric relations become ſubſervient to the purpoſes of legiſlation. What can be more important to a people, who are all legiſlators, becauſe they claim it as their diſtinguiſhing prerogative, to vote in the national legiſlature.

Yet, while the hiſtory of Great-Britain and Ireland has been cultivated with the greateſt attention, and the juriſprudence and connexion of both have been illuſtrated with the greateſt ſucceſs, the annals of that conſiderable part of the empire, the Britiſh colonies, have been hitherto reſigned to neglect as unworthy of notice. When men of genius, indeed, turned their views to this ſubject they immediately encountered difficulties which no talents or induſtry could remove: The records and ſtate-papers were diſcovered to be on different ſides of the Atlantic; no regular collection of their laws had been yet publiſhed; the other materials were found of a nature dry and diſſatisfactory: And, till the war, which was ended by the peace of 1763, the plantations, deemed only inconſiderable and diſtant parcels of an extenſive empire, had remained extremely obſcure, offering little celebrity to their hiſtorian. But the confederated provinces have lately demanded the notice of the world with uncommon ſucceſs, becauſe what is boldly aſked is ſeldom refuſed.

THE PREFACE.

Hiſtorical accounts of the colonies have indeed been written; ſome with greater and ſome with leſs ſucceſs. Yet, while they have recounted the diſcoveries of Cabot they have not ſhewn what rights the ſovereigns of England thereby acquired; though they have ſometimes recited the ſubſtance of colonial charters they have not explained what immunities were conferred by them: And, though they have incidentally mentioned acts, not only of the parliament, but of the provincial legiſlatures, they have ſeldom traced their policy or pointed out their principles. The moſt ſagacious writers foreſaw not the perplexing diſputes that time hath at length produced, or the unparalleled events that have actually happened, and they have never mentioned facts with regard to either. The following ſheets, which attempt to deduce the political annals of the preſent united colonies from their ſettlement to the peace of 1763, *do not therefore ſeem wholly uſeleſs or unintereſting; becauſe they are eſſayed on a plan extremely different, and compiled from authorities either new or more ſatisfactory.*

Nothing more was originally intended than to offer a general account of the civil tranſactions of theſe colonies prior to the preſent reign; in order to lay before the public ſomething as an introduction to the hiſtory of a war, the moſt ſingular in many reſpects to be met with in the annals of recorded time. But, upon a nearer view of the ſubject, it was perceived that almoſt every capital fact had been controverted; that every principle of public law had been diſputed; that a ſhade had been thrown over the whole, either by the inattention of former writers or the miſrepreſentation of the preſent. And the author was ſoon convinced of the neceſſity of aſcertaining the doubtful, of eſtabliſhing the controverted, of illuminating the obſcure. When ancient privileges were ſaid to have been invaded, it ſeemed of the greateſt importance to inveſtigate, with preciſion, what immunities the coloniſts were originally entitled to poſſeſs; when chartered rights were ſaid to have been infringed, it was deemed of uſe to aſcertain what the charters really contained; when it was zealouſly contended that a different rule of colonial adminiſtration had been adopted ſoon after the peace of 1763, *it became neceſſary to exhibit the genuine ſpirit of every government, whether of kings, or parliaments, or protectors, antecedent to the preſent reign.*

In order to render late ſignal events what Lord Bolingbroke calls a complete example, *and to develope, as he ſays, all the honeſt and ſalutary precepts with which*

which it is pregnant both to king and people, it was deemed of the greateſt conſequence to look back to the ſettlement of the colonies; to aſcertain the nature of their connexion with the ſtate, of their original conſtitutions; to mark the progreſſion of their privileges and pretenſions; to point out the chief cauſes that have led imperceptibly to the ſubverſion of their ancient ſyſtems, that have brought on a criſis which England has ſeldom experienced before. And the production has inſenſibly ſwelled to the ſize in which it now appears.

The work naturally divided itſelf into two books, containing ſo many diſtinct periods: The firſt will be found to relate the political annals of theſe colonies from their ſettlement to the Revolution in 1688; *which, by ſome, may probably be thought the moſt curious and inſtructive; becauſe, during that eventful period, the colonies were planted; their conſtitutions, after various changes, were eſtabliſhed; the ground-work of their future juriſprudence was laid; and they were ruled by every different form of government which the ſingular innovations of thoſe days introduced into England: The ſecond will continue the relation of their hiſtory to the peace of* 1763, *when colonial diſputes and woes are ſaid to have begun; which, by others, may be conſidered as the moſt intereſting, becauſe it is moſt recent. The firſt book only is now, with infinite deference, ſubmitted to the cenſure of the public, becauſe the author thought that it might at this time poſſibly do ſome good: The ſecond is in great forwardneſs, and will be ſpeedily publiſhed.*

In proſecution of the arduous taſk which the author had impoſed on himſelf, he ſearched for materials that had been either overlooked or diſregarded by former writers. In order to ſupply that void, which had ariſen from the difficulty of acceſs to the provincial records, he ſtudied the acts of aſſemblies, "the "trueſt of hiſtories," that often contradict, explain, or confirm, the general accounts. He peruſed printed collections of ſtate-papers, before unattended to, which throw conſiderable light on many paſſages, hitherto dark and entangled. Yet he was ſtill uneaſy, becauſe he had been unable to ſatisfy his own judgement, and he perceived that he ſhould be unable to gratify the curioſity of others. He had every reaſon to believe that the plantation-office muſt contain a rich mine of hiſtoric materials, at the ſame time that he thought he ſaw conſiderable difficulty in procuring permiſſion to ſearch for the hoped-for vein. But he was ſoon relieved from his fears by the facility with which his requeſt was no ſooner

explained

explained than granted by their lordſhips of the board of trade: And, on this occaſion, he muſt acknowledge, with thankfulneſs, the kind interpoſition of Mr. Cumberland; who, as their ſecretary, is keeper of the records; who, by his obliging readineſs to facilitate the author's reſearches, ſhewed equally his anxiety to promote inquiries which tended to gratify the public, by diſcloſing uſeful information, and his attachment to the intereſt of letters. Such an ample repoſitory of evidence, with regard to the affairs of the colonies, was now laid open, as few nations poſſeſs, as is ſufficient to gratify even the utmoſt avidity of an antiquarian.

Nevertheleſs, it muſt be admitted that the hiſtorical evidence to be met with in the plantation-office is not equally abundant with regard to every period or to every colony. During the reign of James I. *and a great part of that of his ſucceſſor, the ſuperintendence of the colonies was lodged in the privy-council, which will be found to have exerciſed, during thoſe times, very extraordinary powers, though its proceedings are to be found only in its own books: Yet this defect is ſupplied not only by copies of various conſultations, commiſſions, and charters, which are recorded in* the entries *in this office, but by the uſeful compilations of Hackluyt and Purchas, not only during theſe but preceding reigns. In April,* 1636, *a commiſſion, "for regulating plantations," was granted to the great officers of ſtate, inveſting them with an authority, legiſlative and executive: But it is not to be regretted that their tranſactions do not here appear, becauſe little practical wiſdom could be gathered from them, becauſe their powers were plainly illegal. Of a ſimilar authority, conferred afterwards by the two houſes of parliament, the ſame remarks may be made, ſince it was equally unconſtitutional. The exertions of the regal and parliamentary commiſſioners exhibit ſingular facts, but they offer no uſeful precedents. From the Reſtoration the hiſtoric materials become abundant, ſatisfactory, and intereſting. From this epoch the ſuperintendence of the colonies was once more reſtored to the privy-council: But its ancient powers had been extremely curtailed, not only by acts of parliament but by the ſpirit of the preceding times; and its juſt authority was eſtabliſhed, ſince its exorbitances had been done away. From the downfal of the reſtoration-miniſtry it aſſumed various ſhapes, becauſe frequent changes enſued, till the beginning of the year* 1675, *when ſeveral lords of the privy-council were appointed, by a royal commiſſion, "a*

"committee

" committee for trade and plantations :" Inveſting them " with the immedi-" ate care and ſuperintendence of their affairs ;" empowering them " to meet " once a week and to report." They were honoured with John Locke for their firſt ſecretary, becauſe he was the friend of Shafteſbury. And under this form they continued to act till the reign of William, till that ſad period when the commerce of England was reduced to a ſtate of degradation which it had never known before, when a new ſyſtem was introduced, and the board eſtabliſhed on its preſent footing. In February, 1674-5, the journals *of their proceedings commence, which contain a variety of uſeful information, becauſe they often explain tranſactions and writings which would now be otherwiſe obſcure. The other materials conſiſt of* entries *and of* papers: *The firſt are filled with* copies *of the commiſſions and inſtructions of governors, of diſpatches to them and their anſwers, which have been there* entered *for preſervation: The laſt are compoſed of the* originals *of the ſeveral writings, which affairs ſo various and extenſive naturally produced. It is unneceſſary to obſerve how much an attentive peruſal of ſuch* materials of hiſtory *gratifies curioſity and informs the underſtanding; how much it diſproves, explains, and confirms, printed accounts: But it naturally begets an incredulity; which, though neceſſary to form the hiſtorian, is not always convenient to the man.*

In order to profit from having the key of theſe archives delivered to him, the author carefully inſpected the journals, the entries, the papers, which will be frequently cited in the following pages; though ſuch a tireſome length of time and labour were required, as men of real genius, who are ſeldom plodders, will rarely beſtow. With what ſucceſs theſe, and the collections and laws beforementioned, have been ſtudied, to avoid the miſtakes or to correct the errors of former writers, the public will ſoon decide, to whoſe judgement the utmoſt reſpect and obedience are due.

The author's reſearches convinced him of the truth of what hath been remarked by the celebrated writer of " An Account of the European Settlements in America :" " Whatever is written by the Engliſh, ſettled in our colonies, is " to be read with great caution, becauſe very few of them write without a bias " to the intereſts of the particular province to which they belong, or, perhaps, " to a particular faction in that province. It is only by comparing the prin-" ted accounts with one another, and thoſe with the beſt private informations,

" and correcting all by authentic matter of record, that one can diſcover the " truth; and this hath been a matter of ſome difficulty." When, however, the author reflected how much his own errors ſtood in need of indulgence he forbore to point out the miſtakes of others, to whom gratitude was rather due than blame to be imputed, becauſe he had derived a benefit from their writings: Conſidering it as ſufficient to ſatisfy his own judgement, without aſſigning the reaſon why he rejected or admitted their relations, ſince the labour would have been endleſs, perhaps invidious. And he hath always cited minutely the various authorities on which he relied; partly in order to authenticate his own aſſertions, but more to enable ſucceeding writers, who may be leſs laborious, becauſe of ſuperior talents, to purſue his track with greater eaſe to themſelves and advantage to the world.

Early hiſtorians, without much conſideration, have given an account of the Britiſh empire in America, by beginning at the north and writing ſouthwards; their ſucceſſors have continued a ſimilar mode without any apparent reaſon. The author, however, has followed a different courſe: He begins with the moſt ancient, and treats of the ſeveral colonies as they were either planted or acquired; in order that a progreſs might be traced and perceived; that the hiſtory of the more ancient might reflect light on the latter. What can be more aukward than to be told that Maryland was formed between Virginia, on the ſouth, and Penſylvania, on the north, when it is known that the firſt was ſettled half a century before the laſt had any exiſtence? With deſign to promote the intereſts of order and chronology, to give ſome reſpite to the writer and eaſe to the reader, the following book was divided into twenty-two chapters, correſponding to the nature of the ſubject. And, at the end of each, he has added authorities and notes; *containing references to printed books, to records, and laws; obſervations for the purpoſe of illuſtration; and ſuch a collection of ſtate-papers as tended either to ſatisfy curioſity or to authoriſe the relation; which will enable the reader not only to peruſe the text with confidence, but to draw concluſions for himſelf from the materials of hiſtory; a few of which are re-publiſhed, becauſe every work ought to be complete within itſelf, becauſe papers might as well not exiſt as exiſt in books which are only in the hands of a few. And all theſe the author affixed to the end of every chapter, rather than to the margin, becauſe this mode ſeemed to prevent equally inelegance of appearance and diſtraction of attention; here rather*

ther than to the end, because they form subordinate parts of the foregoing divisions, and give it additional strength; and they may be perused when recollection is strong or passed over when application is exhausted.

Few sculptors or limners have pleased their own judgement or the world by the most finished productions of their original designs: Few writers have been yet able to execute fully what they had originally sketched. The author was soon convinced that the work he had boldly designed was beyond his abilities to execute; yet he persevered, because he was, however, fond of a subject which appeared of importance, and he was convinced that tolerable execution might have its utility, since perfection was not to be hoped for. When men of acknowledged genius have confessed; "that of such a performance it cannot be "expected to be written equally throughout, because the subject sometimes refuses "all ornament; the matter, dry in itself, is by no art to be made otherwise; "a contagion is often communicated from the dulness of materials which yet "were necessary;" what can be reasonably expected of a writer, who could only aim at telling a plain tale in a plain way, who too often sacrificed the manner, which is so important in every thing, to his anxiety to submit to the public authentic matter; who did not always reflect that the polite will not peruse what is not elegant, that the learned will disregard what is not accurate? Yet he was studious not to multiply words, because he knew that brevity is always vivacious, that vivacity often covereth a multitude of faults. In writing of Massachusets it was thought necessary to use the language of the times and the men, because it was most characteristic and most precise: In compiling the whole it was deemed of use to follow the example of the historian of magna-charta; "to tell the story, as he says, with the same air the writers themselves do, "and even to keep close to their very phrase: whereby in several places it is "the worse English, though the better history."

On the authenticity of the facts the public may safely rely, because the author used every endeavour to establish their accuracy, because they who doubt may examine the authorities which are exactly cited to encourage inquiry. Of his principles and reasonings he can only declare, that, though they are the convictions of his heart, they may yet be erroneous, since his understanding, like that of other men, is not only fallible, but liable to mistake: The man, however, who regards it as a religious tenet, to fight no one for his opinions, may reasonably expect some indulgence

dulgence to his. The obſervations of candour are ever received with the attention due to commands, becauſe they are generally juſt and always well intended. The effuſions of captiouſneſs will at all times be derided by the brave and ſenſible, becauſe they merit only deriſion or contempt. He, who is naturally attached to eſtabliſhed authority, would act inconſiſtently with himſelf if he did not implicitly ſubmit to the deciſions of thoſe who preſide over the republic of letters.

POLITICAL

POLITICAL ANNALS

OF THE

UNITED COLONIES.

BOOK I.

CHAP. I.

The origin of theſe colonies is certain. — Columbus diſcovers a new world. — Its name. — Reflexions. — Henry VII. *employs the Cabots to make ſimilar diſcoveries. — They explore the North-American coaſt. — Elizabeth grants patents of coloniſation, and gives it a name. — But no ſettlements atchieved till the reign of James* I. *— Obſervations.*

OF theſe colonies it cannot be aſſerted, as it is of European nations, that their origin is uncertain or unknown; that their ancient hiſtory is fabulous and dark; or that their original inſtitutions have come down the current of time, loaded with the diſputations of the antiquary. Here, there is as little room for the dreams of conjecture or the obſcurities of tradition, as for the regret of the philoſopher, that the eſtabliſhment of nations, which is the moſt important

and inſtructive part of their annals, is generally the moſt imperfect. The diſcovery of a quarter of the globe unknown to antiquity is ſufficiently aſcertained; the firſt ſettlement of Engliſh plantations on it is perfectly known; and their charters have been preſerved and their laws tranſmitted, with the accuracy of the moſt authentic records.

The efforts of Europe, during the fifteenth century, to find a new path to the rich countries of the Eaſt, brought on the diſcovery of a new world in the Weſt. Chriſtopher Columbus, a Genoeſe navigator,[2] was not only the firſt who conceived the idea ſo familiar to us, of arriving at the Eaſt-Indies by ſailing Weſtward, but poſſeſſed, in a high degree, every quality neceſſary for the ſucceſsful execution of an adventure ſo new and extraordinary. Senſible, nevertheleſs, that though the inclination of the times was favourable to his views, ſuch a voyage could be undertaken only by ſovereign powers, he naturally made his firſt propoſal of diſcovery to the republic of Genoa; but it was conſidered by them as the viſion of a theoriſt, loſt in his reveries. His ſubſequent applications to various princes, though at firſt more favourably attended to, in the end proved equally unſucceſsful. Yet, animated by the happy ſpirit of projectors, his diſappointments did not diſcourage him, and he propoſed his enterpriſe to Ferdinand and Iſabella of Spain, who liſtened to him with the extreme caution natural to Spaniards. At the end of an eight years ſolicitation, which would have totally diſconcerted a man of leſs perſeverance, they accepted of his ſervices, and appointed him their admiral in all continents and iſlands by his ingenuity to be explored.

Columbus ſailed from Palos, a port in Spain, in Auguſt, 1492, with three ſmall veſſels, chiefly navigated by criminals, who were pardoned on condition of going with him as mariners, on an adventure which was then deemed impracticable, and which has ſince taught this animating leſſon to mankind; *never to deſpair*. Having with the addreſs and intrepidity ſo natural to him, ſurmounted the difficulties ariſing from a mutinous crew and the dangers incident to a long voyage in a trackleſs ocean, in October, 1492, he deſcried land; which proved to be one of the iſlets that have ſince been denominated the Bahamas: And he ſoon after diſcovered not only the Carribean iſlands, but, at length, a continent.[3]

It

It was reſerved, nevertheleſs, for Americus Veſpucius, a more obſcure and later navigator, who was employed by Ferdinand of Arragon, to draw maps of the new diſcoveries, to acquire the honour of conferring on them his own name. And thus, as Herera remarks with indignation, he procured that by cunning, to which his talents or his voyages did not entitle him.[4]

Little did the wiſdom of thoſe days foreſee the conſequences, both good and evil, that were to reſult to the old world from the diſcovery of the new. Yet, whether we conſider the immenſe ſtreams of the precious metals which have flowed from it into Europe; the ſubſequent increaſe of induſtry and population; the prodigious extenſion of European commerce and navigation; its influence on manners and the arts; this muſt be admitted to be one of the moſt important diſcoveries in ancient or in modern times. But what diſcords has that memorable event ſcattered among the nations of the earth, and what an abundant crop of woes have they gathered during every ſeaſon! The Portugueſe and Spaniards, inflamed by the ſame ſpirit of aggrandiſement or of gain, inſtantly contended for the excluſive ſovereignty of what Columbus had explored.[5] What devaſtations of mankind have been occaſioned by the avidity of Spain to conquer numerous nations whoſe only crimes conſiſted in poſſeſſing a country ſo fruitful in mines as even to gratify the rapacity of their conquerors! Animated by the rancour of commercial jealouſy, the Dutch and Portugueſe have fought for the Brazils. Contrary to her genuine intereſts, and to the inclination of her miniſter, England commenced a war with Spain, in order that the contraband traders on the Mexican Coaſts might no longer be ſearched. A conteſt for the dominion of the North-American Provinces, heightened by the noble emulation of nations, occaſioned a new war with France. And the contention of the confederated colonies againſt the ſupreme power of the ſtate cloſes the ſcene bloody and diſguſting.

During the tedioufneſs of ſolicitation, Columbus, with the ſame deſign, ſent his brother Bartholomew to offer his ſervices to Henry VII. of England. But, being taken by pirates and depreſſed by poverty, it was long before he could make propoſals; which, we are aſſured, were as

joyfully accepted as they were anxiouſly urged.[6] Yet, ſo much time had elapſed, that, before he could return into Spain, he heard of his kinſman's arrival from a ſucceſsful adventure; in which, if that illuſtrious ſeaman did not ſucceed in all his views, he made diſcoveries, that have not only immortaliſed his own name, but have changed, in ſome meaſure, the political œconomy of Europe. Not only the quantity of gold and ſilver, which Columbus brought with him into Spain, but the incidents of his voyage, were, as uſual, greatly magnified: And Henry, of a temper not eaſily diſconcerted where the acquiſition of wealth was in view, in the year 1496, commiſſioned the Cabots of Briſtol to make ſimilar reſearches.[7] Having endeavoured in vain to penetrate to the Eaſt-Indies, by ſailing Northweſtward, Sebaſtian Cabot,[8] in the year 1498, explored a great part of the North-American coaſt. Here he landed, and in the name of that monarch took formal poſſeſſion of a country, which more naturally acquired the appellation of *the New-found-land*, than did the regions diſcovered by Columbus that of America.[9]

But though the Engliſh, during the reigns of Henry VIII. and his immediate ſucceſſors, reſorted thither, either to fiſh on the coaſts[10] or to traffic with the natives, no plantations were attempted; nor does there ſeem to have been much attention paid to the diſcoveries of Cabot till the reign of Elizabeth. That wiſe princeſs, in March, 1578, granted to Sir Humphrey Gilbert a patent of diſcovery and coloniſation.[11] She ſoon after conferred on Walter Raleigh a ſimilar grant, with ſimilar powers.[12] And, in the year 1685, an inconſiderable colony took poſſeſſion of a part of the North-American coaſt, which now forms North-Carolina, as the right of that ſovereign: And to the whole was then given the name of Virginia. Yet, thoſe miſerable ſettlers, as well as ſeveral others who were landed in that country, were either deſtroyed by the natives, or were removed by ſucceeding navigators. And Raleigh having aſſigned his patent in 1590, and with his wonted levity engaged in other projects, no permanent ſettlement was planted till the reign of James I.[13] The national ardour which ſprang from the long and vigorous adminiſtration of that princeſs continued to produce its effects even for ſome time after ſhe had ceaſed to animate the whole.

Thoſe

Thoſe voyages having been thus accompliſhed, and thoſe reſearches made, by virtue of commiſſions under the great ſeal, the ſovereigns of England acquired, by the equity of firſt diſcovery and prior poſſeſſion, a title, in right of the crown, to a great part of the North-American continent. When the earth was the general property of mankind, mere occupancy conferred on the poſſeſſor ſuch an intereſt, as it would have been unjuſt, becauſe contrary to the law of nature, to take from him without his conſent: And this ſtate has been aptly compared to a theatre common to all; but, the individual, having appropriated a place, acquires a privilege of which he cannot be diſpoſſeſſed without injuſtice.[14] Yet, man having a right to the world from the gift of the beneficent Creator, muſt poſſeſs and uſe the general eſtate according to the grant; which commanded them to multiply and to ſubſiſt by labour: And little would the earth have been peopled or cultivated, had men continued to live by hunting, or fiſhing, or the mere productions of nature. The roving of the erratic tribes over wide extended deſerts does not form a poſſeſſion which excludes the ſubſequent occupancy of emigrants from countries overſtocked with inhabitants. The paucity of their numbers, and their mode of life, render them unable to fulfil the great purpoſes of the grant. Conſiſtent therefore with the great charter to mankind they may be confined within certain limits. Their rights to the privileges of men nevertheleſs continue the ſame. And the Coloniſts, who conciliated the affections of the aborigines, and gave a conſideration for their territory, have acquired the praiſe due to humanity, and to juſtice.[15] Nations, with reſpect to the ſeveral communities of the earth, poſſeſſing all the rights of men, ſince they are aggregates of men, are governed by ſimilar rules of action. Upon thoſe principles was founded the right of emigration of old; upon thoſe principles the Phenicians, and Greeks, and Carthaginians, ſettled colonies in the wilds of the earth.[16]

While Columbus gave a new world to the old, he acquired the additional glory of reviving and adding ancient maxims to the law of nations. The Portugueſe having previouſly explored the Azores and other iſlands, inſtantly claimed America, and contended for the excluſion of the Spaniards from the navigation of the Weſtern ocean.[17] But, the diſcoveries

of

of that admirable ſailor were altogether new and different. And pope Alexander VI. adjudged the great proceſs, ſays Monteſquieu,[18] and made the celebrated line of partition: Giving to Spain the countries[19] to be diſcovered by her to the Weſtward of a line to be drawn from pole to pole, a hundred leagues Weſt of the Azores; to Portugal her diſcoveries to the Eaſtward of that boundary. While neither party however ſuſpected the equity of this deciſion or the validity of the grant, both were diſputed by the parliament of England, at a ſubſequent period. In the year 1621, they inſiſted: "That occupancy confers a good title by the law of nations and nature; and if we admit the gift of pope Alexander VI. then "the Spaniards will have by the ſame right both Virginia and Bermudas."[20]

It ſoon became a law among the European nations, that the countries which each ſhould explore ſhall be deemed the abſolute property of the diſcoverer, from which all others ſhall be entirely excluded. The Portugueſe accordingly ſhut out every other people from their ſettlements in the Eaſt, till they were diſpoſſeſſed by the Dutch, who purſued a ſimilar policy. The Spaniards, with a peculiar jealouſy, inſtantly enforced a ſimilar rule with regard to their dominions in the Weſt. Every ſovereign in Europe, who engaged in ſuch enterpriſes, and formed ſettlements, followed their example. And thus it was eſtabliſhed by univerſal conſent as a fundamental principle in the juriſprudence of nations, that all commerce with a colony ſhall be regarded as a mere monopoly.[21] If the Portugueſe and Spaniards were the firſt ſtates which introduced that famous rule, the levity and perfidiouſneſs of France have entailed on her the infamy of being the firſt that deliberately tranſgreſſed it. When a law is diſputed by the powerful, and derided by the weak, it is no longer binding on any. While a mighty confederacy inſiſts, that one ſtate ſhall no more enjoy the excluſive ſovereignty of her tranſatlantic provinces, the commerce of all colonies becomes univerſally free; becauſe, the principle of excluſion, which aroſe from the general conſent, is annihilated.

AUTHORITIES

AUTHORITIES AND NOTES.

[1] Social compact, book 4, ch. 4. [2] Molloy, anxious to acquire for his country the honour of having produced the diſcoverer of America, affirms; *that Columbus was born in England, but reſided at Genoa.* Pref. to the De jure marit. Herera, who was the royal hiſtoriographer of Spain, poſſeſſed however the beſt means of information: And ſee the 1ſt vol. of Hackluyt's Voyages. [3] Herera's Gen. Hiſt. of America, 1 vol. p. 24-48. [4] Ib. 218. [5] Ib. paſſim. [6] Hackluyt's Voyages, 1 v. p. 507-9.

[7] The commiſſion of Henry VII. to the Cabots is ſubjoined; becauſe, it is the moſt ancient American ſtate-paper of England; it evinces how ſoon after the diſcovery of America her ſovereigns engaged in ſimilar projects; it is truly characteriſtic of that intereſted monarch. — The original is in Rym. Fœd. 12 v. p. 595.

A. D. 1496.
A. R. 11. H. VII. } "The king to all to whom, &c. — Greeting. —

Be it known and declared, that WE have given and granted, and by theſe preſents do give and grant, to our beloved John Cabot, citizen of Venice, and Lewis, Sebaſtian, and Sanctius, ſons of the ſaid John, or either of them, to their and each of their heirs and deputies, full authority, privilege, and power, to ſail to all parts, regions, and bays, of the eaſtern, weſtern, and northern ſea, under our banners, ſtandards, and inſignia, with five ſhips or veſſels, of whatever burden or quality they may be, and with ſo many and ſuch ſailors and men as they may chuſe to take with them in the ſaid ſhips at their own proper expence and charges, to find, diſcover, and explore, whatever iſlands, countries, regions, or provinces, either of gentiles or infidels, in whatever part of the world ſituated, which have hitherto been unknown to all Chriſtian people. ——— WE likewiſe grant and give licence to the ſame and either of them, their or either of their heirs and deputies, to affix our aforeſaid banners and inſignia, in any town, city, caſtle, iſland, or continent, by them newly diſcovered. And that the aforeſaid John and his ſons or heirs, and their deputies, may poſſeſs and occupy all the aforeſaid towns, caſtles, cities, and iſlands, by them diſcovered, which of right

right may be ſubjugated and occupied, as our vaſſals, and their governors, lieutenants, and deputies, they obtaining for Us the dominion, title, and juriſdiction of the ſaid towns, caſtles, cities, and iſlands and continents ſo diſcovered: So that nevertheleſs, the ſaid John and his ſons, and their heirs and deputies, are held and bound for every voyage as often as they ſhall land at our port of Briſtol, at which port they are ſtrictly bound to land, after deducting the neceſſary expence by them laid out, to pay unto Us one fifth part of the whole capital profit, whether in merchandiſe or money, of all the fruits, emoluments, commodities, and gains, ariſing from the aforeſaid navigation: WE giving and granting to the ſame and their heirs and deputies, that they ſhall be free and clear of all payment of cuſtoms of all and ſingular the goods and merchandiſes which they ſhall bring back with them from the places ſo newly diſcovered. —————— And moreover We give and grant to the ſame and his heirs and deputies, that all the continents, iſlands, towns, cities, caſtles, and places, whatſoever, by them diſcovered, or that may be diſcovered by them, ſhall not be viſited or frequented by any of our ſubjects without the leave of the aforeſaid John, his ſons, and their deputies, under the penalty of forfeiture of the veſſels and goods of all thoſe who ſhall preſume to ſail to the places ſo diſcovered: WE willing and ſtrictly commanding all our ſubjects, as well by land as ſea, that they give all aſſiſtance to the aforeſaid John and his ſons and their deputies, as well in arming the veſſels and ſhips, as in furniſhing them with all manner of ſtores and proviſions, and all other things neceſſary to be purchaſed by them. Witneſs the King, at Weſtminſter, the fifth day of March. By the King himſelf."

In February, 1497, Henry VII. gave permiſſion to John Cabot, " to " take ſix Engliſh ſhips in any haven of England, being of the burden " of 200 tons, or under, with all furniture, and to take alſo in the ſaid " ſhips all ſuch maſters, mariners, and ſubjects of the king, as willingly " will go with him." — The licence is in Hackluyt, 1 v. p. 511. — Yet, it ſhould ſeem that the diſcoveries before-mentioned were at laſt made at the charge of that prince. John Fabian aſſures us, in his chronicle of the reign of that monarch; " that Henry VII. in the thirteenth year of

" his

" his reign, fitted out a ſhip at Briſtol by means of *one* John Cabot, " which was named and victualled at the king's ſole expence; that the " merchants loaded ſeveral veſſels and ſent them out with it to traffic." Ib. 515.

Henry VIII. continued the projects of diſcovery which his father had begun: And his ſucceſſor rewarded the eminent navigator who carried them into execution. That excellent prince Edward VI. in conſideration of his good and faithful ſervices granted to Sebaſtian Cabot, in January, 1549, an annuity of 166*l.* 13*s.* 4*d.* — Rymer's Fœd. 15 v. p. 181. — And it was continued to him by Philip and Mary, in November, 1555. — Ib. 427-66. — [8] [9] Hackl. 1 v. 680.

[10] As early as the reign of Edward VI. the Engliſh fiſhery on the American coaſts had become an object of national importance and encouragement. The ſtatute, 2 & 3 Edw. VI. ch. 8. enacted: " That no officer " of the Admiralty ſhall make exactions on adventurers to Newfound- " land." This is the firſt act of parliament which was paſſed with regard to America: And money was the object of it. The act of 5 Eliz. ch. 5. " touching politic conſtitutions for the maintainance of the navy," contains very curious regulations for promoting Engliſh fiſheries. But its chief policy was to compel every one to eat fiſh; " not, ſays the law, " for any ſuperſtition to be maintained in the choice of meats, but po- " liticly for the increaſe of fiſhermen and mariners, and repairing of " port-towns, and navigation." And by 15 Cha. II. ch. 16. no toll was to be exacted in Newfoundland. But the North-American continent had then acquired other appellations, and *Newfoundland* was altogether reſtricted to the iſland of that name.

[11] [12] See thoſe grants in Hackluyt, 1 v. 677-725. — [13] Ib. -728, -37, -815. — [14] Vattel's Law of Nations, 89-91 — [15] Ib. — [16] Monteſq. Spirit of Laws, 2 v. p. 63. Commentaries, 1 v. p. 7. — [17] Herera, 2 v. p. 97. — [18] Spirit of Laws, 2 v. p. 62.

[19] Pope Nicolas V. in January, 1454, granted to Alphonſus, king of Portugal, and to the infant Henry, the empire of Guinea, with authority to ſubdue it; and he at the ſame time prohibited all perſons from ſailing thither, without their permiſſion. — See the bull in Leibnitii codex juris-

gent. diplomat. p. 165. — The following extract of the grant of pope Alexander, by which he gave America to Spain, diſplays the late coloni-al tranſactions in a very ſtriking light.

" From our motion, not moved thereto by your petition, or that of any other in your behalf, but of our own mere liberality and certain know-ledge, and the plenitude of apoſtolic authority, we grant to you and your ſucceſſors, kings of Caſtile and Leon, all iſlands and continents, found and to be found, diſcovered and to be diſcovered, towards the Weſt and South, [drawing a line from one pole to the other, at an hundred leagues to the Weſt of the Azores,] by the authority granted us in the bleſſed Peter, and by the vicarſhip of Jeſus Chriſt, which we diſcharge on earth with all the dominions, ſtates, &c. to the ſame belonging: And we con-ſtitute, ordain, and appoint, you, your heirs, and ſucceſſors, as afore-ſaid, lords of the ſame, with full, free, and all manner of, power, au-thority, and juriſdiction. [Here the pope very properly excepts ſuch countries, as might be in the poſſeſſion of any other Chriſtian prince, antecedent to the year 1493.] And we ſtrictly command all manner of perſons, of whatever dignity, whether imperial or royal, and of whatever ſtate, degree, order, and condition, under the penalty of a ſentence of full excommunication, which they incur, *ipſo facto*, if they act contrary to the premiſes, but that they do not preſume to go to the ſaid iſlands and continents, for carrying on of trade, or any other cauſe, without the ſpecial leave of you, your heirs, and ſucceſſors, aforeſaid. Given at Rome, at St. Peter's, 7th of May, 1493: And in the firſt year of our pontificate." — From the ſame, p. 203.

Did not a thouſand other circumſtances evince it, how finely do thoſe famous grants, ſo gravely applied for and ſo gravely given, demonſtrate the extreme futility of bulls, charters, and laws, when unſupported by real power! And what excellent leſſons of wiſdom do they offer both to prince and people!

[20] Parliamentary Debates, 1620-1, publiſhed from a MSS. in Oxford Library, p. 250-1. — [21] Spirit of Laws, 2 v. p. 62. — Nevertheleſs, it it was not till after great hoſtilities had been exerciſed for years, between England and Spain, that the treaty of Madrid was made, in July, 1670, for

for aſcertaining the American territories of both. It was thereby agreed, that each ſhould retain what it then poſſeſſed; that the ſubjects of neither ſhould enter the fortified places of the other for the purpoſes of trade. And the faithful execution of that treaty was from that time given in charge to all colonial governors. See the repreſentation of the board of trade to the houſe of Lords, with regard to the famous ſettlement of Darien. — Record, in the plantation-office, titled, Plantations Gen. B. p. 154.

CHAP. II.

James I. *is applied to for leave to plant a colony. — The charter. — His inſtructions. — Obſervations. — A colony planted. — Its diſeaſes, diſſentions, and purſuits. — The adventurers diſappointed. — They obtain a ſecond charter. — Its contents. — A numerous emigration. — Its diſtreſs. — The ſettlement abandoned. — Re-eſtabliſhed. — The company deſponds. — A third charter. — The parliament meets. — The company petitions the commons. — Their proceedings. — State of the plantation. — Martial law. — Legiſlative power. — Obſervations.*

THE enterpriſing genius, which added ſo much ſplendour to the active reign of Elizabeth, continued its influence even during that of her indolent ſucceſſor: Though the cauſes no longer exiſted, the effects remained with all their benefits. Goſnold having made a voyage to the Virginian coaſt, in 1602, reſolved to eſtabliſh a plantation in a country, which pleaſed him ſo much. Yet, even in that age of project and adventure, it required ſome addreſs and time to perſuade perſons of rank or wealth, to become partners in an enterpriſe, from which they could not eaſily perceive what wiſe men have been unable to diſcover in the preſent days, the promiſed gain to the adventurer or the important advantages to the nation. But, encouraged at length by the junction of other projectors of greater conſequence, he applied to James I. " for licence to de-" duce a colony into that part of America commonly called Virginia."[1] If that prince was not endowed with talents for war, he was at leaſt maſter of ſome of the arts of peace; and, with all his failings and his faults, he poſſeſſed a laudable genius for coloniſation. With a view to civilize the highlands and Weſtern iſles of Scotland, ſays an elegant writer, and to inſpire thoſe countries with the love of peace and induſtry, before his acceſſion to the crown of England, he eſtabliſhed among them colonies of people from the more induſtrious ſettlements.[2] With the ſame wiſe deſign, at a ſubſequent period, he formed plantations of Engliſh in the

the ſix Northern counties of Ireland: And this meaſure, as we are aſſured by one of the beſt of her hiſtorians, firſt laid the foundation of the ſecurity and affluence of that iſland.

Naturally fond of novelty, that monarch ſeems to have been prodigiouſly pleaſed with the propoſal of deducing a colony into Virginia. He greatly commended and graciouſly accepted the deſires of the projectors of it. And, in order to promote *ſo noble a work*, on the 6th of April, 1606, he granted letters patent, under the great ſeal of England, to Sir Thomas Gates and his aſſociates. All thoſe territories in America, which either belonged to that monarch, or which were not then poſſeſſed by any other Chriſtian prince or people, lying between the 34th and 45th degrees of Northern latitude, were conferred on them. They were divided at their own deſire into two ſeveral companies; the one, conſiſting of adventurers of the city of London, was called the firſt colony; the other, compoſed of merchants of Briſtol and other Weſtern towns, was named the ſecond. The former was required to eſtabliſh its ſettlement between the 34th and 41ſt degrees of latitude; the latter was ordered to plant between 38 and 45 degrees: Yet ſo that the colony which ſhould be laſt formed ſhall not be planted within one hundred miles of the prior eſtabliſhment. The adventurers were empowered to tranſport thither ſo many Engliſh ſubjects as ſhould willingly accompany them, with proviſion for their uſe, and arms for their defence, without payment of cuſtoms for ſeven years. It was declared, that the coloniſts and their children ſhould at all times enjoy the ſame liberties, within any other dominions of that prince, as if they had remained or were born within the realm. Yet, for the better government of the emigrants, there was eſtabliſhed for each of the projected ſettlements, a council conſiſting of thirteen, which were to be appointed and removed by the royal inſtructions: And theſe were empowered to govern the colonies, according to ſuch laws as ſhould be given under the ſign manual and privy ſeal of England. Two other boards were formed in England, which were in like manner to conſiſt of thirteen perſons, and to be appointed equally by the king: And theſe were inveſted with the ſuperior direction of affairs with regard to the adminiſtration of the colonies. For the benefit of the adventurers, licence was given to them to ſearch for mines of gold,

gold, ſilver, and copper; yielding one-fifth of the two former metals, and one-fifteenth of the latter, to the king. They were empowered to make a coin that ſhould paſs current as well among the coloniſts as the natives. The preſident and council, within the colonies, were authoriſed to repel thoſe, who ſhould attempt to ſettle or traffic within their juriſdiction, without their authority; to ſeize their perſons and effects, till they ſhould pay a duty of two and a half in the hundred of the value, if a ſubject; but five, if an alien: And theſe taxes were to be applied for one and twenty years to the uſe of the adventurers, but afterwards to be paid into the royal exchequer.*

Such then is the ſubſtance of the moſt ancient colonial charter, which comprehended all the preſent colonies, from New-England to Carolina incluſive; and from which the moſt important privileges have at all times been claimed. Yet little was there in it, alas! favourable to the intereſts of freedom, or declaratory of the general privileges of the ſubject. Vain was it to aſſure the coloniſts of being conſidered as Engliſhmen, if they were by the ſame inſtrument deprived of Engliſh liberties: And what rights could a people be ſaid to enjoy, who, without poſſeſſing the ſmalleſt particle of ſelf-government, were at once ſubjected to the will of the prince; to the edicts of a council they did not appoint; to the ordinances of a commercial aſſociation over which they had no controul.

It is a circumſtance in the hiſtory of the charters of the Colonies extremely remarkable, that with a ſpirit ſomewhat unaccountable they declare, "that the emigrants and their poſterity ſhall ſtill be conſidered as "Engliſh ſubjects." Whether the anxiety of the coloniſts ſolicited this clauſe, or the caution of the reigning ſovereigns obtruded it, is uncertain. Its exiſtence demonſtrates the opinion of both parties on an intereſting point of conſtitutional law. If the planters aſked for that declaration, it ſhews how much they loved the character of Engliſhmen, which they wiſhed not to forfeit by emigration. If the royal grantors ſpontaneouſly conferred what the others ſeem to have been ſo ready to receive, it evinces how much they deſired to retain the allegiance of their ſubjects. Yet ſuch clauſes were either futile, or declaratory of the ancient law. For a king of England could no more deprive the meaneſt of his

people

people of his birthright, than he could confer all their important liberties, included under that term, on aliens to his crown. An Engliſhman, on the other hand, could not diveſt himſelf of the character of ſubject; he could not ſay, "I will be no longer an Engliſhman:" Whitherſoever he emigrated, he ſtill owed allegiance to the crown and obedience to the laws of his country; becauſe the weakneſs of his childhood had been protected by them. We ſhall diſcover, however, that the moſt accurate of all the charters, that of Pennſylvania, contained no ſuch declaration: an omiſſion which aroſe probably from deſign rather than accident. That illuſtrious ſtateſman and lawyer, the lord-keeper Guildford, peruſed it with attention, and adjuſted its various clauſes. When William was about to renew the patent of Maſſachuſets ſoon after the Revolution; he was adviſed, by the ableſt lawyers in England, that ſuch a declaration was nugatory; becauſe the law neceſſarily inferred, that the coloniſts were Engliſhmen, intitled to the rights and burdened with the duties of Engliſhmen. If the clauſe before mentioned was futile, the reſervation of a right of legiſlation with regard to the Colonies in the ſupreme magiſtrate was undoubtedly illegal. For whatever was the opinion or the practice of James I. and his immediate ſucceſſor, a king of England at no period of its annals could legiſlate for his people without the conſent of the ſtate. When ſuch charters were given, it ſhews that the "ancient liberty" of the original emigrants was not unbounded or extenſive.

While the council of the firſt Colony was occupied during the ſummer of 1606, in procuring emigrants to accompliſh the great object of its wiſhes, James was equally employed in a buſineſs the moſt arduous of any; in compiling a code of laws for an infant people. On the 20th of November of that year he iſſued "orders and inſtructions for the Colo-"nies" under the privy-ſeal of England. And they merit the greateſt attention; becauſe they are explanatory of the charter, as well as characteriſtic of that monarch.

He inveſted the general ſuperintendence of the Colonies in a council in England, "compoſed of a few perſons of conſideration and talents." He ordered, that the word and ſervice of God ſhould be preached and

uſed

uſed according to the rites and doctrines of the church of England. Having thus provided for the intereſts of religion, by interweaving into the Virginian conſtitution the eſtabliſhment of that church, his next cares were turned to the intereſts of the ſtate. Both the legiſlative and executive powers within the Colonies were inveſted in the preſidents and councils, without any mention of the repreſentatives of the people or alluſion to them: And they were empowered to make laws, and to conſtitute officers, for their government; yet, with this proviſo, that ſuch ordinances ſhould not touch any man's life or member, ſhould only continue in force till made void by the king or his council, ſhould be in ſubſtance conſonant to the laws of England. With a cautious jealouſy he required that none ſhould be ſuffered to withdraw the allegiance of the coloniſts from the king and his ſucceſſors; and he commanded, that all offenders, contrary to this eſſential rule, ſhould be impriſoned till reformation, or ſent to England to receive condign puniſhment. Tumults, mutiny, and rebellion, murder and inceſt, were to be puniſhed with death; and for theſe offences the criminal was to be tried by a jury: He ordered ſmaller crimes to be puniſhed ſummarily at the diſcretion of the preſident and council. And he required that no perſon ſhall remain in the colony without taking the oath of obedience. Lands were to be holden within the colony as the ſame eſtates were enjoyed in England. With a humanity and juſtice that did honour to that legiſlator, he ordered, that all perſons ſhould kindly treat the heathen people in thoſe parts, and uſe all proper means to draw them to the true ſervice and knowledge of God, and to induce them to enter into a ſociable traffic. And in theſe legiſlative inſtructions there was an expreſs reſervation, that as the colonies ſhould increaſe, the king and his ſucceſſors might ordain farther laws, ſo that they were conſonant to the juriſprudence of England.[6]

The inſtructions of that monarch contain ſeveral things, ſays the hiſtorian of that colony, of an extraordinary nature and extremely arbitrary.[7] But there is not a more common miſtake of writers than to judge of the paſt by the manners of their own times, and to apply principles of law, acknowledged when they write, to tranſactions of former times, when very diſſimilar opinions prevailed. The orders before mentioned are however

however extremely intereſting. They demonſtrate as well how unlike were the ſentiments of thoſe days to the preſent, as what the original conſtitution of Virginia really was, and how much of the law of England was then introduced: They diſplay the legiſlative talents of that learned prince, and evince his real views with regard to thoſe eſtabliſhments however miſtaken. Yet it ſeems certain, that though ſuch exertions of prerogative were very common in that age, a king of England could no more exerciſe a legiſlative authority over Engliſh ſubjects, becauſe they had removed to a diſtant territory of the ſtate, than over Engliſhmen within the realm. For the privileges of both had been derived from the ſame great charter. Such then was the rotten foundation whereon was erected, with no great ſkill, the ſuperſtructure of the Virginian immunities and laws.

Inveſted however with ſuch authority, ſeveral perſons of conſiderable conſequence in the nation undertook the arduous taſk of planting the Southern colony, for which ſuch a conſtitution had been thus ſketched by the legiſlative hand of their ſovereign. Having choſen Sir Thomas Smith their treaſurer, and appointed other officers, they provided a ſmall fleet to tranſport the emigrants to Virginia. To Newport, who was then famous for his ſkill in the Weſtern navigation, they committed the charge of this embarkation: And he ſailed from the Thames in December, 1606, carrying with him the inſtructions before-mentioned, and the names of the intended colonial council, carefully concealed. And to this ſingular policy may be attributed the diſſenſions which ſoon commenced among the leaders, and which continued to diſtract them during a voyage long and diſaſtrous.[8]

The month of April, 1607, is the remarkable epoch of the arrival of the firſt permanent colony on the Virginian coaſt. A ſmall party, urged by the anxiety natural to men who have been long at ſea, landing on the promontory, which, in honour of the prince of Wales, was named Cape Henry, was inſtantly attacked by the natives, who conſidered their invaders as enemies, becauſe, they were ſtrangers; from whom they expected abundant evil, but little good. And this haſty rencounter, in which ſeveral on both ſides were wounded, gave riſe to mutual diſtruſt and ha-

tred, that in aftertimes produced the greateſt misfortunes. As nature had bleſſed this country with thoſe beauties and advantages, which the firſt coloniſts viewed with admiration, and deſcribed as "having the "prerogative over moſt pleaſant places known," it was not long before they diſcovered a river that they honoured with the name of their king, and a plot of land which admirably ſuited their purpoſe. They took poſſeſſion of a peninſula on the Northern bank of James River, where they began to cut down the grove, which had for centuries afforded ſhelter and food to the aborigines, to make room for James-Town. But, neglecting the ſalutary and humane orders of their prince and lawgiver, they neither courted the amity of the tribes nor offered a conſideration for their country, which was thus invaded contrary to their inclination, though they held it from nature. And the coloniſts, with a folly equal to their contempt of order, made no ſuitable preparations to reſiſt the attacks of an injured but implacable and gallant people. The natives, according to their ancient policy, viſited kindly the ſtrangers, while they meditated that aſſault which ſecurity had courted, and was ſoon after made, but eaſily repulſed by the fire from the ſhips. Terrified by a mode of defence new and aſtoniſhing, they ſued for peace, and delivered over their powerful invaders to their own diſſenſions, more fatal than the ſtroke of the enemy.

The code of laws, which their ſovereign had given to the emigrants, which contrary to the accuſtomed practice of legiſlators had been hitherto cautiouſly concealed, was at length promulgated; and the names of that council which had been inveſted with all power were diſcloſed. Now commenced the rule of the moſt ancient adminiſtration of Virginia; conſiſting of ſeven perſons, and forming a pure ariſtocracy. But all the inconveniences of that form of government were ſoon ſadly experienced. Among other deplorable ills, the American climate ſeems always to have begotten a propenſity to diſobedience, which ſoon appeared, and produced diſaſters that the whole found abundant cauſe to regret. While the counſellors, agreeably to the orders before mentioned, choſe Wingfield their preſident, they excluded, on the moſt frivolous pretences, from a ſeat among them, Smith, ſo famous in colonial annals,

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though nominated by the ſame inſtrument which had given exiſtence to the greater number. Theſe animoſities being at length in ſome meaſure appeaſed by the prudent exhortations of Hunt, their chaplain, they turned their undivided attention to the government of a colony feeble in numbers and enterpriſe, which was thus planted in diſcord, and grew up in miſery.

At the expiration of ſix weeks, Newport, the admiral, departed for England: Leaving one hundred emigrants, who were doomed, for purpoſes inſcrutable to man, to be the fathers of a mighty people. In vain ſhall we ſearch their hiſtory for the fate of battles, the ſack of cities, the conqueſt of provinces; for thoſe objects that fix the attention or melt the heart: We ſhall only diſcover the unintereſting turmoils of a few men, ſtationed in a deſert, whoſe principal purſuit was for ſome time only in queſt of food. Yet their tale, unimportant as it is, muſt be told. In little more than a century and a half we ſhall behold their poſterity unſheath the ſword againſt the moſt potent nation on earth; which had given them being, nurſed their childhood, reared them to manhood. And we ſhall meet with unexampled events that might have been foreſeen, and that no wiſdom could have prevented, becauſe they neceſſarily flowed from cauſes interwoven with their very exiſtence.[9]

Being thus left in a dreary wilderneſs to their own exertions and purſuits, ſurrounded by ſubtle and powerful enemies, the coloniſts ſoon experienced the embarraſſments incident to ſuch a ſituation. The damps of a country wholly uncultivated and covered with an immenſe foreſt, and their food conſiſting of viands ſcanty and unwholeſome, brought on diſeaſes that in a few months ſwept away half their number; among whom was extremely regretted, Goſnold, the zealous projector of the enterpriſe: Similar diſtempers, owing to like cauſes, have afflicted all future adventurers to the preſent times. Thoſe, who remained, were greatly enfeebled and actuated by the diſſatisfactions natural to their conditions. Having no empires to ſubdue like the Spaniards of the South, nor any object to ſuſtain the mind under affliction, the ſurvivors diſputed with each other, becauſe they had no common enemy on whom to vent their indignation. While all received their parſimonious allowance of

aliment from *the common ſtore*, the preſident, who had eſcaped the preſſures of hunger and diſeaſe, was accuſed of engroſſing the general proviſions and of deſigning to abandon the colony. Him they depoſed with the genuine ſpirit of diſcontent, and appointed Ratcliff in his place, who in his turn gave equal diſſatisfaction, becauſe the coloniſts continued unhappy. During thoſe days of penury, when it was ſaid of the emigrants, " that, had they been as free from all ſins as gluttony and drunk-" enneſs, they might have been canoniſed for ſaints," neceſſity conſtrained them to cultivate with the natives that friendly traffic for proviſions, which they had refuſed to the prudent orders of their prince. And Engliſhmen meanly procured from Indians, the moſt lazy of mortals, ſuch plenty of the productions of their labour, that no man is ſaid to have wanted. Yet, this melioration of circumſtances did not prevent the bad effects of the intrigues of the depoſed preſident, who fomented former diſcontents, in order to enable him to execute his projects for abandoning the ſettlement, which the prudent vigour of Smith diſcovered and diſconcerted. Thus that animated adventurer acquired the honour of preſerving the colony; and poſterity have ſhewn their gratitude by doing juſtice to his merits.[10] Yet it is to be lamented that he met with the too common fate of the greateſt benefactors of mankind. He departed from Virginia not long after without the acquiſition of any thing more ſolid than empty renown; and died at London, in the year 1631, diſregarded or forgotten.

Meanwhile, James was too fond of the character of lawgiver, and too much delighted with the project of coloniſing America, to withdraw his legiſlative care from the infant ſettlements. As experience had ſhewn, that the former council was compoſed of too few members to be of any real utility, he iſſued, in March, 1607, upon the prayer of the coloniſts, an ordinance for enlarging the number and authority of " his commiſ-" ſioners for directing the affairs of the colonies." [11] It empowered them to appoint and to remove colonial officers; to eſtabliſh laws for the better ordering the ſeveral plantations; to do every other act which was neither contrary to the Virginian patent, to the laws of England, nor in derogation of the prerogative royal. However modern opinions may con-

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demn this regal act, written in the genuine language of legiſlation, yet it diſplays at once the ſentiments of the king and the coloniſts, with regard to the prerogative of the one and the privileges of the other. Encouraged by favourable reports, and invigorated by this increaſe of power, the treaſurer and council in England exerted themſelves with a laudable diligence to tranſmit proper ſupplies to the plantation. Two ſhips they ſent, under the conduct of Newport, with a reinforcement of an hundred and twenty perſons; conſiſting of many gentlemen, a few labourers, ſeveral refiners, goldſmiths, and jewellers: The various denominations of theſe men evince the views of the whole.

The joy of the colony upon the arrival of theſe veſſels was equal to the extent of its late deſpondency. And a relaxation of diſcipline enſued, which as uſual proved extremely fatal. The ſailors, being permitted to traffic with the natives agreeably to their habitual licentiouſneſs, completely ruined that commerce for proviſions, which had hitherto chiefly prevented the devaſtations of famine. And a ſect, peculiar probably to America, naturally ſprang up from public encouragement, which, with the contemptible avidity of Spaniards, did nothing but ſearch the country for gold; neglecting the obtention of a ſupply of abſolute neceſſaries, which in the ſituation of the coloniſts the precious metals could not provide. The ſhips were at length ſent back; the one loaded by the miners before-mentioned with a glittering earth, which they hoped in vain contained a metal, that would have operated as the bane of their country; the other with cedar, which was of more real utility: And theſe are recorded as the firſt Virginian products, tranſmitted as the firſt remittance, and as the moſt early purſuits of an infant people; and Martin returned to claim a reward for what merited puniſhment, the diſcovery of a golden mine, which would have proved the ruin of England."

The ſummer of 1608 is the remarkable æra in Virginian annals for the firſt voyage which was made towards the ſource of the bay of Cheſapeake. It was to Smith that the colony and the nation were equally obliged for this important ſervice. In an open barge of two tons burden, with fourteen perſons on-board, he explored the whole of that trackleſs extent of water, from Cape Henry where it meets with the ocean, almoſt to the river Suſquehannah, which forms its mighty foun-

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tain; encountering with various tribes of the natives, and marking the different rivers with the countries among them. And he acquired the honour of performing a voyage of conſiderable danger, and of great utility, with means little proportioned to the undertaking; which ought ever to be adverted to in forming a judgement of the comparative merit of navigators. Returning to James-Town, he found the colony relapſed into former diſeaſes, agitated with new diſſenſions, and animated with a general diſpoſition to depoſe the preſident: But the tidings, which were now brought and gratified the expectations of every one, that according to the relations of the Indians the bay ſtretched into the South-Sea, ſilenced clamour, and appeaſed diſcontent. In reward of his ſuperior merit, that active adventurer was choſen firſt magiſtrate, in September, 1608, by the council, with general acclamations. And now a contrary conduct to that which had given ſo much offence was purſued with ſucceſs. The wiſdom of his adminiſtration infuſed confidence; the vigour of his conduct commanded obedience. The military exerciſes, which he obliged all to perform, at once ſtruck the Indians with aſtoniſhment, and inſpired them with awe.[13] And during his rule the colony ſaw a gleam of momentary hope.

The treaſurer and council were in the mean time not only offended with the colonial factions, and diſappointed in their hopes of diſcovery or gain, but were alarmed with intelligence, that the emigrants propoſed to divide the country among themſelves, without their aſſent. Yet that project being diſclaimed, and future amity promiſed, they reſolved to perſevere in an enterprize of which the end and the utility ſeem to have been equally uncertain. With Newport, who was again ſent with a ſecond ſupply, freſh inſtructions were tranſmitted; which ſhews the extent of their deſigns, which the preſident and council of the colony were ordered expreſſly to follow: And theſe were threatened, if they did not obey, with a puniſhment which then ſtruck the coloniſts with horror; "that "they ſhould be allowed to remain as baniſhed men in Virginia." They were inſtructed; to explore the weſtern country, in order to procure certain intelligence of the South-Sea; to tranſmit as a token of ſucceſs a lump of gold; to find one of the loſt company ſent out by Raleigh: And

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theſe orders demonſtrate, that the chief object of the moſt active projectors was at this time rather diſcovery than coloniſation. About ſeventy perſons were now tranſported, among whom were the two firſt female adventurers, and ſeveral Dutchmen and other foreigners, in order to introduce the making of tar, and glaſs, and aſhes; which might have been more eaſily procured nearer England: And here ſeems to have commenced the policy, ſo contrary to the genius of commerce, of procuring from a colony rather than from foreign nations the raw materials of manufacture, though of better quality and of cheaper price. Various *coſtly novelties* were at the ſame time ſent, with directions to crown the native king of Virginia; though the meaſure was derided as weak, and the bad conſequences were foretold with a confidence which ought to have prevented what humanity ſeems to have adviſed.

Long had a perſonage, who reſided in the vicinity of James-Town in barbarous ſtate, who is celebrated in Virginian annals by the name of Powhatan, ruled over that extent of country from James-River to the Potowmak, with the authority of a conqueror. With him had the coloniſts, ſince their arrival, had conſiderable tranſactions both in peace and in war. And he was now, in conſequence of the orders above-mentioned, inveſted with the uſual enſigns of royalty, with all the pomp which the wealth of his own retainers or the poverty of the colony admitted. Whatever may have been the deſign, whether to flatter the vanity of the great, or to gain the attachment of a ſachem, who was ſaid to be powerful, this futile policy inſpired that diſcerning chief with a haughtineſs, which not long after incited the reſentment and provoked the chaſtiſement of the preſident. But the inquiries after the South-Sea, or mines of gold, were made then, as fortunately for England they have been at all times ſince, to no purpoſe. Samples however of thoſe productions that had been recommended, though with the greateſt difficulty and labour, were procured and tranſmitted: And Ratcliff, the depoſed preſident, was by the ſame veſſel ſent to England, that his conduct might be there enquired into conformably to the charter. The colonies being awakened at length from their reveries of gold and ſilver, becauſe they were at laſt ſatisfied that it was in vain to hope for mines of the precious metals, began to turn

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their attention to purſuits of more real importance. And though the country did not afford thoſe objects, which ſo captivate the fooliſh hearts of men, it offered to the hand of the diligent a fruitful ſoil and climate. A law, which was deſigned to fan the ſpark of induſtry that began to kindle, by which the preſident and council declared, "that he who will "not work ſhall not eat," was attended with ſalutary effects. In addition to thoſe commodities that have been mentioned, glaſs was eſſayed; timber for the various uſes of the cooper and the builder was prepared; the planter was rewarded with plenteous crops of corn: And ſuch were the products of Virginia when tobacco, its important ſtaple in modern times, was uncultivated and unknown; yet the progreſs of diligence was ſlow, becauſe it was often interrupted. The poultry and the hogs had multiplied abundantly; but of mankind there had yet been no natural increaſe; becauſe of the two women, who lately arrived, one was juſt married:[14] And it was long before Virginia ſaw a race of men born within her foreſts, whoſe labour cultivated her fields, whoſe ſwords defended her borders, whoſe talents ſupported her rights.

The treaſurer and council, in England, had fondly hoped for the rich commodities which the Spaniards had found in the South; and their diſappointments were now equal to the extent of expectations, vehement and unbounded. They had juſt heard, with indignation, of the ſevere treatment of the Indians by the preſident, ſo contrary to their orders as well as to prudence and humanity. And, in return for their anxieties and expence, neither remittances of value had been ſent, nor ſuitable reſearches had been made. Yet hope did not altogether forſake them; becauſe they ſtill dreamed of future wealth and diſcoveries more favourable to their deſigns: And with a perſeverance amid their chagrin and loſſes, which is ſo commendable, except in purſuit of objects abſolutely bad, they reſolved to proſecute what was now endeared to them by the difficulties which they had encountered. Partly in order to augment the number of the adventurers by the addition of perſons of the greateſt conſequence in the nation, but more to explain former and to acquire new privileges, they applied for and eaſily obtained from the *favour* of their ſovereign a new charter, in May, 1609.[15]

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The ſecond patent recited and confirmed the firſt. There were now added to the former adventurers many of the firſt nobility and gentry, at the head of whom was Robert earl of Saliſbury, moſt of the companies of London, a numerous body of merchants and tradeſmen: And all theſe were incorporated by the name of "the treaſurer and com-"pany of adventurers, of the city of London, for the firſt colony in "Virginia." To them were now granted in abſolute property what ſeems formerly to have been conveyed only in truſt, the lands extending from Cape Comfort along the ſea-coaſt Southward two hundred miles, from the ſame promontory two hundred miles Northward, and from the Atlantic Weſtward to the South-Sea; to be holden of the manor of Eaſt Greenwich, in free and common ſoccage: And paying one-fifth of the gold and ſilver that ſhould be found in lieu of all ſervices. The corporation was authoriſed to convey under its common ſeal particular portions of theſe lands to ſubjects or deniſens, on ſuch conditions as might promote the intention of the grant. It was empowered to make ordinances for the colony and for thoſe on the ſeas going thither, ſo that they may be agreeable to the laws of England: And it was inveſted with abſolute authority to rule and correct the coloniſts, according to ſuch conſtitutions as ſhould be thus enacted by it. Licence was given it to tranſport to Virginia all perſons willing to go thither; to export merchandiſes without paying any cuſtoms during ſeven years. And, as a farther encouragement, there was granted to the treaſurer and company, and their aſſigns, a freedom from all ſubſidies in Virginia for one and twenty years, and from all impoſitions on importations and exportations to and from England, or any other of the king's dominions, "except only the five "pounds in the hundred due for cuſtoms." The coloniſts and their poſterity were declared to be entitled to the rights of natural ſubjects, as if they had remained within the realm. The governor of the colony was empowered to uſe martial law in caſes of rebellion or mutiny. And, to prevent the ſuperſtitions of the church of Rome from taking root in the plantation, it was declared that none ſhould paſs into Virginia but ſuch as ſhall have firſt taken the oath of ſupremacy.[16]

Such then were the powers conferred on the company, and ſuch the privileges granted to the Virginians. Thus it appears deciſively, that the coloniſts were to be governed by the ordinances of a corporation reſiding in England, in which they were not repreſented, and over the deliberations of which they had no controul. Thus was affirmed the general right of taxing them without their conſent, becauſe they were exempted from duties payable within the colony for a limited time. Though this charter eſtabliſhes the truth of intereſting facts, becauſe they demonſtrate the nature of the original eſtabliſhments; yet, were we to judge of it according to principles of law, known and admitted at preſent, there ſeems not to have been granted to the emigrants any one privilege worth contending for.

It is a ſingular circumſtance, in the hiſtory of theſe colonies, that there is no inſtance of an emigration without the permiſſion of the ſupreme magiſtrate of the ſtate firſt applied for and obtained. The anxiety with which all prayed for charters, under the great ſeal of England, ſhews that they deemed them extremely eſſential to the ultimate ſucceſs of their deſigns: And the views of every one we may trace in the juriſprudence of their country. By the ancient law, which was enforced by the great charter of John, all men might go freely out of the kingdom, ſaving their faith due to the king. But, as inconveniences had probably ariſen, though they might have been either prohibited or recalled by the royal proclamation, becauſe every man of right ought to defend the ſtate of which he is a member, no ſuch clauſe appears in the charter of his ſucceſſor. In after-times, the wiſdom of the great council thought it neceſſary to adopt meaſures to prevent emigration; and it was enacted, during the reign of Elizabeth, that, if any ſubject or deniſen ſhall depart the realm without licence under the great ſeal, he ſhall forfeit his perſonal eſtate and loſe the profits of his lands during life. Though the rigour of this prohibition was afterwards relaxed; yet, even during the preſent times, when the diffuſion of philoſophy and common ſenſe has enlightened the world, a king of England may enjoin every ſubject either not to depart the kingdom or to return; under penalties great and inevitable, from which the declamations of theoriſts would not relieve him. A licence then,

then, " to deduce colonies," has been at all times applied for, becauſe it was always neceſſary; and it has been generally granted, becauſe it was deemed good policy to favour ſuch eſtabliſhments. But though little was conceded to the emigrants by the charter of 1609, much was conferred on the corporation. Yet were its powers great they were not uncontroulable, becauſe it was ſubject to the ſuperintendence of the courts of juſtice within the realm, which could compel it to act as well agreeably to the grant as to the laws of the ſtate. It was only when ſuch extenſive authority was given to thoſe, who reſided beyond the Atlantic, that it became inconvenient and dangerous, becauſe the arm of the ſtate was too limited and feeble to enforce obedience.

The addition of ſo many perſons of rank, of influence, and of fortune, augmented the reputation no leſs than the wealth of the former adventurers: And they were now enabled to preſs on with bolder ſteps to the goal of all their wiſhes. They ſoon fitted out nine ſhips, with five hundred emigrants, and every neceſſary for the eſtabliſhment of a colony effectual and permanent. When the miſchiefs of former miſrule and diſobedience were remembered, they appointed Lord Delaware captain-general for life, with extraordinary powers; and they created ſeveral other officers with ſounding names, but of no real authority or uſe. The general conduct of this embarkation was intruſted to Newport, who had made ſo many voyages acroſs the ocean. Sir Thomas Gates, Sir George Somers, and that navigator, were ſeverally empowered to recal the command of the preſident and council, and to aſſume the adminiſtration till the arrival of that nobleman. But, diſputing among themſelves with regard to precedence, they agreed, with an imprudence of which there are few examples, and which gave riſe to the moſt fatal embarraſſments, to embark with the admiral as companions of the ſame voyage: And fortune ſeems to have delighted in puniſhing their folly, by ſtranding the ſhip on Bermudas; which, from that deplorable accident, acquired the name of the Somers-iſle.[17] Sir George Somers being a member of parliament, the commons declared his ſeat vacant; becauſe, by accepting a colonial office, he was rendered incapable to execute his truſt: And this, it ſhould ſeem, was the firſt time that Virginia was noticed by parliament.[18]

Perhaps the annals of the world cannot exhibit an example of colonies eſtabliſhed upon principles of policy exactly ſimilar to thoſe of the preſent. England did not, like the little republics of Greece, oblige her ſons to ſeek new habitations, and to form diſtinct communities in the wilds of the earth; like Rome, ſhe did not give lands as a gratuity to ſoldiers, who became a military force for the defence of her frontiers; ſhe did not, like Carthage, ſubdue the neighbouring ſtates, in order to acquire an excluſive right to their commerce. No conqueſt was ever attempted over the aboriginal tribes of America: Their country was only conſidered as waſte, becauſe it was uncultivated, and therefore open to the occupancy and uſe of other nations. Upon principles which the enlightened communities of the world deemed wiſe, and juſt, and ſatisfactory, England deemed a great part of America a deſert territory of her empire, becauſe ſhe had firſt diſcovered and occupied it; and thence inferred, that ſhe might there form ſettlements of her ſubjects, in the ſame manner as if the ſurrounding ſea had delivered back the lands which had been formerly raviſhed from her coaſts. Whether Virginia was planted, in order to gratify the ambition of a king, to ſatisfy the avidity of a commercial company, or to promote the national intereſts by the extenſion of trade, the emigrants departed with conſent of the whole, on condition that they ſhould ſtill be conſidered as ſubjects, though they intended to ſettle in a diſtant dominion of the ſtate. As Engliſhmen, they carried with them their former rights: As Engliſhmen, they owed obedience to their ancient legiſlature. For, it is a principle of univerſal equity, "that he who enjoys the benefit ſhall ſubmit patiently to all its incon-"veniences."

Of the nine veſſels which ſailed in May, 1609, ſeven only arrived ſafe. But, if that circumſtance augmented the numbers, it added nothing to the induſtry or peace of the ſettlement. To the former cauſes of diſſenſion new matter ſeems to have been ſuperadded. Though common ſenſe, the common law, the charter, all declared, that the former patent, giving authority to the preſident and council, ſhall remain in force till the publication of the new commiſſion; yet a majority of *the new-comers* were of a different opinion. Theſe men, being governed chiefly by the ſuggeſtions

geſtions of thoſe, who had been formerly expelled the colony, and now returned to promote its diſtractions by former arts, committed a thouſand extravagances, which their prudence, as coloniſts and men, ſhould have taught them to avoid: And they attempted to deprive Smith of the government. But, acting on that emergency with the vigour and good ſenſe which he poſſeſſed the moſt when he moſt wanted them, he impriſoned the chief promoters of the ſedition: And, for ſome time, regularity and obedience were in a great meaſure reſtored. In order partly to form new ſettlements, but more to purge James-Town of the moſt turbulent, he detached one hundred perſons to the falls of James-River, under the conduct of Weſt; and the ſame number to Nanſamond, under the command of Martin. But change of place made no change in their habits; and, having no deſirable object to attract their attention, they continued equally vicious in their new ſituation as they had been in the old. Having imprudently offended the neighbouring Indians, whoſe good-will a ſenſe of ſafety ſhould have taught them to cultivate, many of them were ſoon cut off; and the few, who eſcaped the attacks of their enraged enemies, returned in deſpair to beg the protection of that authority which they had lately contemned. Waſted by a fatal accident to his perſon, and diſguſted in the height of his debility, with diſtractions which he could neither prevent nor remove, Smith departed for England: Leaving the miſconduct of the coloniſts to the chaſtiſement of thoſe miſeries which anarchy never fails to produce,[19] and which now approached with haſty ſteps.

Various pretenders immediately claimed the ſupreme command: But the general ſuffrage, rather than the deſtination of the late patent, conferred the preſidency on Percy, who derived no leſs conſideration from his illuſtrious family than from the virtues of his heart. Neither his health, however, nor the extent of his talents, qualified him to act with the ability which the times and the people required. A total confuſion, with all its miſchiefs, enſued; and having, as we are aſſured, neither ruler nor preacher, they feared neither God nor man. The Indians being informed that the perſon, whoſe conduct and vigour they had ſo often experienced, no longer ruled the coloniſts, attacked them on all ſides;

and

and having, in the height of their imprudence, waſted the proviſions, on which they could alone rely for aliment, a dreadful famine enſued, that was long remembered by the name of *the ſtarving time*. Of five hundred perſons, left in the colony by the late preſident, there remained only ſixty, of all ages and ſexes, at the expiration of ſix months. In this calamitous ſituation, to which it was reduced by the equal folly of rulers and people, did Sir Thomas Gates, the lieutenant-governor, find the ſettlement, when he arrived in May, 1610. It was from the mutual complaints of all that he learned the cauſe of their ruin. He ſaw no other means to preſerve thoſe who ſurvived theſe complicated evils, than to abandon a country, which had proved ſo extremely fatal, becauſe it had not yet known the bleſſings of real government or liberty; and with univerſal approbation he embarked them, and ſailed for England.[20] None dropped a tear, becauſe none had enjoyed one day of happineſs. Thus, whatever were the views of thoſe who promoted emigration, they all equally failed. The king acquired no new ſubjects who might pay him more willing obedience than the old; the avarice of the company was not gratified by the diſcovery of mines; the national commerce was not extended; and when the coloniſts awoke from their golden dreams, they found themſelves in poſſeſſion of real miſery.

But, before Gates could proceed to ſea, Lord Delaware arrived fortunately with three ſhips, which brought abundant ſupplies; and he carried back with him to James-Town the feeble remains of the colony. He publiſhed his commiſſion, which inveſted in him the ſole command; he appointed a council of ſix perſons to aſſiſt him in the adminiſtration; and now commenced a very eſſential change in the form of the ancient Virginian conſtitution. For the original ariſtocracy, under which the ſettlement had ſuffered ſuch various ills, was now converted to a rule of one; over whoſe deliberations the people had no controul. That nobleman delivered an oration, which was received with applauſe, though it reproved them for their late miſconduct, and intreated them to amend former follies, leſt he ſhould be compelled to draw the ſword of juſtice. And his good ſenſe and vigour ſoon re-eſtabliſhed affairs. He allotted to every one his particular buſineſs and condition: He commanded the French

French to plant the vine; the Engliſh to labour in the woodlands: He appointed officers to ſee his orders obeyed: And all ſubmitted patiently to an authority which experience convinced them was ſo neceſſary and wiſe. Thus peace, and order, and induſtry, aſſumed the place of former diſtractions and idleneſs. The incurſions of the Indians were repelled, and two forts were built, in order to prevent future attacks. He detached Somers to Bermudas, to procure a ſupply of proviſions; and he ſent Gates to England, as well to give an account of affairs, as to ſolicit farther aſſiſtance. But the health of the captain-general did not permit him to contribute much longer to the public happineſs by the equity and firmneſs of his adminiſtration, and he ſailed for England in the beginning of the ſubſequent year. He departed: Leaving about two hundred coloniſts poſſeſſed of the bleſſings of health, of plenty, and of peace with their neighbours who were tractable and friendly; and delivering over the adminiſtration once more to Percy, till the arrival of Dale, who was ſoon expected.[21]

The treaſurer and company, ſtill anxious for the fate of the colony, about the ſame time ſent off that gentleman with three ſhips; carrying adventurers, cattle, and neceſſary proviſions for a year.

He arrived ſafely in May, 1611. And he beheld with pain the colony relapſing faſt into its former ſtate of idleneſs, and of penury, its natural concomitant. As the ſame cauſes continued, new and ſimilar ſeditions had ariſen. But, with a ſpirit that probably ſaved the ſettlement, he publiſhed martial law; which he inſtantly executed by puniſhing the moſt guilty: And thus did neceſſity introduce a ſyſtem of juriſprudence, which, though little favourable to the genius of liberty, we ſhall find became the common law of the colony,[22] from length of practice and uniformity of application.

Mean while, the treaſurer and company, being little attentive to the maxim of the great Bacon, "that thoſe who plant colonies muſt be endued with great patience," had expected anxiouſly ſome great preſent advantage; and, as they had hitherto derived no benefit in proportion to the expence, they entertained thoughts of abandoning an enterpriſe from which they had acquired neither profit nor honour. They aſked the

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real opinion of Sir Thomas Gates and Lord Delaware with regard to the probability of final ſucceſs; and their flattering repreſentations determined them to perſevere in proſecuting an adventure which had appeared lately ſo hopeleſs and unprofitable. The moſt favourable accounts were at the ſame time given of Bermudas; which, though it cannot now exiſt without ſupplies from abroad, was then recommended as an object of importance, becauſe it might furniſh proviſions to Virginia: But, as it was not included in former patents, they determined to apply for a new grant, which they eaſily obtained in March, 1611.[23]

Willing to promote every meaſure that might advance the benefit of the company, and ſecure the ſafety of his ſubjects in Virginia, James confirmed, to both, former charters and immunities. He granted to the treaſurer and company the iſlands ſituated in the ocean, within three hundred leagues of any part of the Virginian coaſt, upon the former conditions. The corporation was now conſiderably new modelled. Four great and general courts of the adventurers were for the firſt time eſtabliſhed, and were to be holden every year, for the determination of affairs of importance: For tranſacting the common buſineſs, weekly meetings were appointed. The treaſurer and council were empowered to tranſport people to the colony, with all merchandiſes, without paying any cuſtom for ſeven years; adminiſtering the oaths of allegiance and ſupremacy to perſons going thither. As great irregularities had been committed, they were authoriſed to apprehend, not only thoſe who had agreed to ſerve in the colony, and afterwards refuſed to go thither, but thoſe who had returned thence by ſtealth, that they might be puniſhed as the governor and council ſhould think proper: And in order to promote the effectual ſettlement of the plantation, which had coſt ſuch conſiderable ſums, licence was given to open lotteries in any part of England.[24]

However inconſiſtent with the liberties of the ſubject, and conſequently contrary to law, were ſome of the clauſes of the above charter, there were privileges conferred by it on the company, of the greateſt importance. The lotteries alone, which were the firſt ever drawn in England, brought twenty-nine thouſand pounds into the company's treaſury;

ſury; and, if we may credit its hiſtorian,[25] "they ſupplied the real food "by which Virginia had been nouriſhed." Yet being at length conſidered as a national evil, they attracted the notice of parliament. As well the proclamation of that monarch, "not to ſpeak againſt the Vir-"ginian lottery," as the prejudice it had been to the commonwealth, were preſented by the commons as grievances. And the maſter of the wards reported to the houſe, "that his majeſty of himſelf did never "like this lottery, but gave way to it becauſe he was told that Virginia "could not ſubſiſt without it; and he will ſuppreſs it if it be a grie-"vance."[26] Theſe lotteries were accordingly ſuſpended in March, 1620, by an order of council; which gave for a reaſon, that as they had been licenſed by proclamation, upon the application of the company, ſtating the diſtreſſes of the colonies, they ought to be ſuppreſſed by a ſimilar mode, ſince the commons houſe of parliament had complained of them as an abuſe detrimental to the commonwealth.[27] Theſe notices, trivial as they may ſeem, demonſtrate not only that Virginia was not ſettled entirely at the coſt of her firſt inhabitants, but the modes of public buſineſs, and the deciſive interpoſition of the commons.

Encouraged thus by the favour of their ſovereign, and aided by the contributions of the freemen, the treaſurer and council diſpatched Sir Thomas Gates, with ſix large ſhips, carrying three hundred adventurers, one hundred cattle, and other uſeful ſupplies. He arrived in Auguſt, 1611; and aſſumed the government. Parties were immediately ſent out from James-Town to form diſtant ſettlements. Sir Thomas Dale laid the foundation of Henrico in the following September. He ſoon after expelled the neighbouring Indians, whoſe injuries to the colony afforded a pretence, and eſtabliſhed in their room New Bermudas. A conſiderable extent on both ſides of the river was laid out into hundreds; and over all theſe captains were appointed to protect and govern them. Yet, one of the inſtructions before-mentioned, however well intended, ſeems to have proved extremely pernicious, and long prevented the growth of the colony. During five years next after their landing, the coloniſts were ordered to trade jointly; that the fruits of the general induſtry ſhould be placed in a public magazine, whence every one ſhould

He is ignorant of the character of the Indian, and the words of his inſtructions.

be ſupplied agreeably to the directions of the council. But, when men are not to profit, they will labour little; and, when all are fed from a common granary, few will concern themſelves how it is filled: And with this reaſoning the Virginian ſtory exactly correſponds. The emigrants were too often in want of food, and all the energy of martial law became neceſſary to promote diligence and to preſerve peace. There appear to have been moreover two capital defects in the inſtitution of the ſettlement. The firſt coloniſts had neither women nor property, the two objects which the hearts of men deſire the moſt: Women to ſmooth the aſperities of life, and property to intereſt and invigorate: And theſe, probably, were the ſad cauſes of all their woes. The term of five years being now happily expired, the governor, in the year 1613, relaxed ſomewhat from the ſeverity of the regulation before-mentioned: And now, three acres of cleared lands were allotted to each in the ſettlement of James-Town, in the nature of farms, for which he was bound to labour eleven months for the public; but in Bermudas hundred, one month's labour and a few buſhels of corn diſcharged the miſerable farmer from farther ſervices. However extraordinary theſe ſingular regulations may now appear, "they then gave the coloniſts, ſays their hiſtorian,[27] much "content;" which is but too ſeldom, alas! the ruling virtue of man. Yet the farmers did not poſſeſs the lands that were aſſigned them by a tenure of common ſoccage, which carries with it freedom and ownerſhip; but enjoyed them as tenants at will, which produces a dependence, deſtitute of property, and unworthy of freemen.

The reſources of James I. were wholly inſufficient to ſupply his wants, which were in proportion to the extent of his improvidence; and he was conſtrained to call a parliament in the beginning of the year 1614. The treaſurer and company, being equally diſtreſſed, reſolved to apply to the commons for ſimilar relief. Their petition was received; and a day was appointed to hear them by their counſel. He impertinently digreſſed to matters of much weight; he took upon him to cenſure ſome things, and to adviſe: And he offended the houſe, and was reprimanded by the ſpeaker. But Lord Delaware, whoſe attachment to the colony ceaſed only with life, ſpoke in ſupport of the application.

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He gave the houſe an account of the conqueſt of the country, and of the planting of the colony: And to the objection, " that, were this enter-" priſe undertaken by the houſe and king, it might prove the cauſe of a " war," he anſwered; this was no juſt ground of offence. For, the country was named by the queen: The Spaniards defend the Weſt-Indies; the Portugueſe the Eaſt; the French the river St. Laurence; the Hollanders the Moluccas: He added; that all the plantation required was but a few honeſt labourers burdened with children. And he concluded by moving, " that a committee may conſider of the means for " this for ſeven years, at which ſome of the company may be preſent." It was objected however, that the treaſurer and thoſe of that corporation ſhall withdraw themſelves till the matter be debated; but to this was anſwered, what ſeems to have been the ſenſe of the houſe, " if a bill be " brought in that concerneth York, her repreſentative ought not to be " withdrawn, becauſe it relateth to the commonwealth." The petition appears not on the journals, which were then taken imperfectly; but it is apparent, that the treaſurer and company applied to the commons, to aſſiſt them in proſecuting an enterpriſe, which had coſt them immenſe ſums of money, without any adequate profit. They were heard in a manner ſolemn and unuſual; becauſe it was ſaid, during the debate, " that " it is an extraordinary favour to admit counſel here upon a petition."[26] Nothing, it ſhould ſeem, was effectually reſolved on: The houſe appears to have been " greatly perplexed, between his majeſty's wants on " the one hand, and the peoples grievances on the other." Diſtruſt, ſo baneful to concord and to every laudable purſuit, had gone forth: And that monarch and the commons ſoon after ſeparated mutually diſpleaſed.[27] Thus early were the affairs of the colonies brought before the parliament: But, how extremely remarkable is it, that, before the coloniſts had acquired property, or a participation in a provincial legiſlature, the commons exerciſed juriſdiction.

Alteration of ſyſtem is ſufficiently pernicious in the beſt eſtabliſhed government; but, in an infant colony, frequent change of governors is extremely deſtructive: And owing to this, among other cauſes, the proſperity of Virginia was greatly retarded. The adminiſtration de-

volved once more on Sir Thomas Dale, upon the return of Gates to England, in the beginning of the year 1614. Of the conduct of Dale, it is recorded; "that, by war upon enemies, and kindneſs to friends, "he brought the affairs of the ſettlement into good order." It was to this governor, to whoſe memory the coloniſts are very juſtly grateful, that they owe the introduction of landed property. For the reſtrictive orders before-mentioned, having been found extremely deſtructive, were now laid wholly aſide, and a contrary policy purſued with the moſt happy effect. Fifty acres of land were granted, in the year 1615, to every adventurer and his heirs; and the ſame quantity for every perſon imported by others: And this, ſays Stith,[18] was the ancient legal method of granting lands in Virginia, to encourage people to come themſelves, and to ſend others thither, to inhabit the country. Thus the tenure at will was changed to that of common ſoccage: And thus, with this advantageous alteration, freedom firſt rooted in colonial ſoil; and, though choked at the beginning, it ſoon acquired ſtrength in ſo fruitful a climate, and flouriſhed. Dale ſailed for England in the beginning of the year 1616; giving up the truſt, that he had executed with ſuch advantage to the colony and reputation to himſelf, to Yeardley, as deputy-governor.

The acquiſition of property naturally added vigour to the purſuits of the coloniſts. They now not only ſupplied themſelves with corn, but repaid amply what had been formerly received from the indolent natives: And the year 1616 is remarkable for the introduction of tobacco, which is at preſent ſo well known in the circle of our commerce and laws. The hiſtory of this plant is alone ſufficient to evince, that perſecution has ſeldom been able to deſtroy the object of her hate. James I. deteſting tobacco with a ſtep-mother's rancour, wrote againſt it, what the royal author entitled a counter-blaſt; the parliamentary orators derided it, as a vile weed that had equally ruined the manners and eſtates of the ſubject; the company iſſued edicts againſt the cultivation of it: Yet, it ſtruck ſo deep into Virginian mould as to out-grow oppoſition, to become a favourite of the world, and to animate the diſputes of nations. To the production of this plant, which had been originally carried from Tobago to England, the planters applied with that ardour which novelty and gain never

never fail to inſpire. When a new governor arrived in the ſubſequent year, he found the ſtreets of their capital overſpread by it, and the coloniſts diſperſed over the country as beſt ſuited their convenience in the proſecution of this favourite object.[29] And Virginia proſpered in proportion as ſhe was awakened from her lethargy; becauſe nothing is ſo advantageous to a people as to give a ſpring to their ardour.

The rule of deputy-governors was as little propitious to the colony, in thoſe days, as it has ever been ſince. When Argal, a new deputy, arrived in May, 1617, he found that freſh diſcontents had ariſen; he ſaw, with concern, the capital almoſt in ruins, and public and private edifices equally proſtrated; he beheld, with apprehenſion, the Indians frequenting daily their houſes, whereby they had become expert in their arms, of which they had acquired poſſeſſion: And for all theſe inconveniences, with a true legiſlative ſpirit, he provided an adequate remedy. He procured, by traffic with the Indians, a conſiderable quantity of corn; the growth of which had been lately ſomewhat neglected: And this is the remarkable period of the firſt introduction of the labours of the plough; which, in all civiliſed countries, are of prodigious importance, becauſe they form the baſis of their power. The coloniſts ſolicited for a ſupply of huſbandmen and implements of agriculture, with a ſolicitude which ſhews that they had at length diſcovered the importance of both. The treaſurer and council, in the mean while, complied with the wiſhes of the colony, when they ſent out Lord Delaware, the captain-general, with abundant ſupplies: But that nobleman did not live to behold once more thoſe whom he regarded with the affection of a father. His memory is, to this day, held in the higheſt eſtimation, as one of their firſt and moſt diſintereſted benefactors. The tidings of this deplorable event ſeem to have changed the whole conduct of Argal: And martial law, which had been proclaimed and executed during the turbulence of former times, was now continued even in the ſeaſon of peace. A diſpute having ariſen between the firſt magiſtrate and Brewſter, a perſon of conſideration, with regard to the management of Lord Delaware's eſtate, this gentleman was now tried, by martial law, for contemptuous words ſpoken of the governor. He was found guilty and condemned, according to that arbitrary

ſyſtem;

ſyſtem; which, if we may credit the colonial hiſtorian, "was then the "ſtanding rule of proceeding, and had become the common law and "cuſtom of the country." The ſentence was reſpited upon great intereſt made by the humane: And he appealed to the treaſurer and council in England, who reverſed the judgement of the court-martial. This is the firſt inſtance of an appeal carried from the colonies to England: And it is equally remarkable, that it was made to the company, and not to the king in council; to whom appeals were not probably tranſmitted till, by the diſſolution of the corporation, the reins of government were graſped by royal hands: Nor were they commonly proſecuted till a period ſubſequent to the reſtoration. Since ſuch was then the common law, we ought naturally to expect that the legiſlative power was not more propitious to freedom: And the ſupreme authority was, at that period, exerciſed by the governor alone. Argal publiſhed, in the year 1618, a variety of edicts, which not only evince this fact, but diſcloſe ſeveral intereſting particulars of the condition of the colony. He ordered: That merchandiſes ſhould be ſold at an advance of twenty-five in the hundred, and tobacco taken in payment at the rate of three ſhillings a pound, on the penalty of three years ſervitude to the company: That no one ſhould traffic privately with the Indians, or teach them the uſe of fire-arms, upon pain of death to teacher and ſcholar: That no perſon ſhould hunt deer, or hogs, without the governor's leave: That no man ſhould ſhoot, except in his own neceſſary defence, till a new ſupply of ammunition arrived, on pain of a year's perſonal ſervice: That none ſhould go on-board the ſhips, at James-Town, without the governor's leave: That every perſon ſhould go to church Sundays and holydays, on pain of ſlavery during the following week; for the ſecond offence he was declared a ſlave for a month; and, for the third, a year and a day.[30]

Such then was the legiſlature of Virginia during thoſe days; ſuch its common and ſtatute laws; and ſo dreadful to freemen, and extraordinary, were the penalties annexed. Argal was not only accuſed of many offences in matters of government, of waſte of the public revenues, but of wrongs done to individuals, and of general oppreſſion. The treaſurer and council received informations of all theſe accuſations with indignation:

tion: Pitying the condition of a miſerable people, they appointed Yeardley captain-general, and empowered him to examine, with great attention, the complaints before-mentioned, in order that redreſs might be given in proportion to their wrongs. He arrived in April, 1619, bringing with him ſeveral inſtructions favourable to the intereſts of freedom. And he ſoon after declared his intention of calling a general aſſembly;[11] which gave the greateſt joy to men, who had long groaned under the defects of their conſtitution, the orders of a capricious governor, and beneath the weight of their own folly and miſconduct.

It is impoſſible to view mankind, in a political ſituation, more truly deplorable than were the Virginians during the foregoing ſad period of their ſtory. They were ſubjected to the arbitrary orders of their prince; to the intereſted ordinances of a corporation within the realm; to the edicts of a haughty governor; and they enjoyed none of thoſe liberties which Engliſhmen claim as their birthright. They were aſſuredly reduced to the condition of a conquered people: And we ſhall ſoon hear the ſecretary of ſtate aſſerting, in the houſe of commons, "that Virginia "was a country gotten by conqueſt, and to be governed as ſuch by "the king's prerogative." But, it is altogether impoſſible to ſupport the notion of conqueſt. For, none was made or attempted over the aborigines; and it is utterly incongruous, to ſpeak of men, who were ſent to conquer, as ſubjugated to the will of the conqueror. The coloniſts, indeed, had been hitherto ruled rather as ſoldiers in garriſon, by martial law; or as the humble ſlaves of a deſpot; than as Engliſh ſubjects, who ſettled in a deſert territory of the crown, and who were juſtly entitled to poſſeſs former privileges, as fully as ſo diſtant a ſituation admitted. Yet it will be ſomewhat difficult to diſcover, in this moſt ancient portion of colonial annals, peculiar immunities, or provincial authority, excluſive of parliamentary juriſdiction.

AUTHORITIES

AUTHORITIES AND NOTES.

[1] Purchas's Pilgrims, 4 v. p. 1705: This book was publiſhed ſo early as 1625. — [2] Robert. Hiſt. Scot. 2 v. p. 282. — [3] Lel. Hiſt. Ireland, 2 v. p. 204-13. — [4] This charter is in the Virginian Entries in the Plantation-Office, vol. 1, p. 1; and in the appendix to Stith's Hiſt. Virg. N°. 1. — [5] The inſtructions are in Stith's Hiſt. 25-30.

[6] The very intelligent obſerver on the ancient ſtatutes, in ſumming up the legiſlative character of James I. remarks: "Some laws paſſed which "deſerve much to be enforced, nor do I find any one which has the leaſt "tendency to extend the prerogative, or abridge the liberties and rights "of his ſubjects; a negative merit in a king, which deſerves to be ſet "againſt many poſitive ones." Obſerv. p. 227-8.

[7] Stith's Hiſt. p. 30-5. — [8] Smith's Voyages, p. 41; which were publiſhed, in 1630, at the requeſt of the Virginian company. — [9] Ib. ch. 1, 2. — [10] Ib. — [11] Virg. Entries, 1 v. p. 44. — [12] Smith's Voyages, ch. 3, 4. — [13] Ib. ch. 5, 6, 7. — [14] Ib. 7, 8, 9, 10. — [15] Ib, ch. 11; and ſee this charter in Virg. Entr. 1 v. p. 49; and Stith's append. N°. 2.

[16] This oath is ſubjoined; becauſe it is to be found in books which are not in the hands of every one; it throws light on the nature of the king's eccleſiaſtical authority in the colonies; it ſhews what were the engagements of the emigrants, religious and political. — "I, A. B. do utterly teſtify and declare in my conſcience, that the queen's highneſs is the only ſupreme governor of this realm, and of all other her majeſty's dominions and countries, as well in all ſpiritual or eccleſiaſtical things or cauſes as temporal; and that no foreign prince, perſon, prelate, ſtate, or potentate, hath, or ought to have, any juriſdiction, power, ſuperiority, pre-eminence, or authority, eccleſiaſtical or ſpiritual, within this realm; and therefore I do hereby utterly renounce and forſake all foreign juriſdictions, powers, ſuperiorities, and authorities; and do promiſe, that from henceforth I ſhall bear faith and true allegiance to the queen's highneſs, her heirs, and ſucceſſors, and to my power ſhall aſſiſt and defend all juriſdictions, pre-eminences, privileges, and authorities, granted

to

to or belonging to the queen's highneſs, her heirs, and ſucceſſors, or united and annexed to the imperial crown of this realm." — 1 Eliz. ch. 1. And ſuch remained the law of England till the Revolution; when that ſtatute was repealed by 1 Wm and M. 1 ſeſſ. ch. 8, ſ. 2.

REMARK. James I. wrote *an Apology* for the before-recited oath, which he defended againſt the attack of Cardinal Bellarmine with an infinite profuſion of learning, ſcriptural and legal. — See King James's works, p. 247.

[17] Smith, ch. 12. — [18] Com. Journal, 1 v. p. 392, 3. The common law diſability, which was declared by this reſolution, was not probably adverted to at a ſubſequent day, when it was enacted by 6 An. ch. 7, ſ. 25, "that no governor, or deputy-governor, of any of the plantations, ſhall be eligible to parliament."

[19] Smith, ch. 12; and Purchas's Pilg. 4 v. p. 716-29. — [20] Ib. 1732; and Smith, p. 106. — [21] Ib. 106-9. — [22] Ib. 109-11; and Stith's Hiſt. 122, 3. — [23] Smith, p. 109, 10. — [24] Virg. Entries in Plant. Off. 1 v. 131; Stith's Appendix, N° 3. — [25] Stith, p. 191. — [26] Parliam. Deb. 1620, 1. vol. 1. p. 81-99. — [26] Virg. Ent. 1 v. p. 201. — [27] Stith, 39-131, 2; Smith, 111-114. — [26] Com. Journ. 1 v. p. 581-7, 8. — [27] Ib. 505, 6. — [28] Hiſt. 139; and Smith, 114. — [29] Ib. 120, 3. — [30] Smith, 123-5; Purchas's Pilg. 4 v. p. 1774; and Stith, 146-56, in which may be ſeen thoſe ſingular edicts. — [31] Smith, 126; Purchas, 1775; Stith, 157.

From the epoch of the conqueſt of New-York, till the acceſſion of James II. to the throne, appeals were proſecuted from the judicatories of that colony, as well to the duke of York as to the king in council. — N. York Entries in Plant. Off. 1 v. throughout.

In June, 1620, James I. iſſued a proclamation, "for reſtraint of the "diſordered trading in tobacco;" the recital of which is not only curious in itſelf, but ſupports the foregoing reaſoning. — "Whereas we, out of the diſlike we had of the uſe of tobacco, tending to a general and new corruption both of mens bodies and manners, and nevertheleſs holding it of the two more honourable that the ſame ſhould be imported among other vanities and ſuperfluities which come from beyond the ſeas,

than be permitted to be planted here within the realm, whereby to abuſe and miſemploy the ſoil of this fruitful kingdom, did prohibit the planting of it in England after the 2d of February, 1620," &c. — Rymer's Fœd. 18 v. p. 233. — The corporation, at the head of which were then ſome of the wiſeſt men in the nation, ſeems to have thought that it would have been an equal proſtitution of the Virginian glebe to plant tobacco in it. Sir Edwin Sands, the treaſurer, informed the general court, in the year 1619, " That he had, by the advice of the council, cauſed to be " drawn a new covenant, to be inſerted in all future grants of land, " that the patentees ſhould not apply themſelves chiefly to tobacco, but " to other commodities therein ſpecified." — Stith's Hiſt. p. 165. — Such then were the ſentiments of ſtateſmen in that age, which were then probably very juſt and politic, and which change of manners and circumſtances has rendered ridiculous. The Independents of Maſſachuſets, comparing the ſmoke of tobacco, in the language of James, to that of the bottomleſs pit, prohibited the uſe of it in the year 1640, when the fanaticiſm of the colony was at its greateſt height: But ſome of the clergy having at length adopted the practice of ſmoking, " tobacco, by " an act of the general court, was ſet at liberty." Hutch. Hiſt. Maſſ. 1 v. p. 152.

CHAP.

CHAP. III.

The firſt aſſembly called. — Wives ſent to the coloniſts. — Convicts tranſported as ſervants. — Tobacco firſt imported. — Taxes impoſed. — Parliament meets. — Its debates. — The Virginian conſtitution eſtabliſhed. — Tobacco ſent to Holland. — The colony ordered to bring its products to England. — A maſſacre and famine. — A ſupply ſent. — Conteſts in the company. — A commiſſion of enquiry ordered. — The report. — The corporation refuſes to ſurrender the charters. — A writ of quo warranto iſſued. — Patents cancelled. — Commiſſioners ſent to enquire into the ſtate of Virginia. — The proceedings of its aſſembly. — The company applies to the commons for protection. — The government of that dominion aſſumed by the king. — Death of James. — A review of his colonial adminiſtration.

THE month of June, 1619, is the happy epoch, in Virginian annals, of the introduction of a provincial legiſlature, in which the coloniſts were repreſented. The colony had been divided only into ſeven hundreds or diſtinct ſettlements, which ſeem to have enjoyed ſome of the privileges of boroughs: And from this circumſtance the democratic branch of the aſſembly has been called, to this day, the houſe of burgeſſes, though compoſed almoſt entirely of the repreſentatives of counties. To theſe Yeardley, the governor, in purſuance of his inſtructions from the company, iſſued writs for the election of delegates. The aſſembly, formed of the governor, the council, the deputies, then met together in one apartment, and tranſacted affairs like the parliament of Scotland of old; which mode continued unchanged till a period ſubſequent to the reſtoration. Thus compoſed, and thus convened, the legiſlature "debated all "matters thought expedient for the good of the whole." The laws, which were then enacted, and which do not now exiſt, were tranſmitted to England for the approbation of the treaſurer and company, without whoſe confirmation they were of no validity: And, though they ſeem not to have been formally approved, it was ſaid of them, "that they were very "judiciouſly formed." Nor were the coloniſts ungrateful for a change

ſo advantageous and juſt, as allowing them to participate in the government of themſelves. Feeling the ſettlement degraded by the arbitrary ſyſtem that had rooted in its juriſprudence, the aſſembly, while it thanked the company for the late favour, begged the general court " to reduce " into a compendious form, with his majeſty's approbation, the laws of " England proper for Virginia, with ſuitable additions:" Giving a reaſon, which ſhews a ſpirit very different from that of recent times, " that " it was not fit that his ſubjects ſhould be governed by any other rules " than ſuch as received their influence from him." The introduction of an aſſembly was attended with the happieſt effects. The governor was now reſtrained to act with the advice of his council. If martial law was not entirely aboliſhed, it was reduced within the limits preſcribed by the royal inſtructions; and the laudable forms of juſtice and government, which were uſed in England, were eſtabliſhed: And the emigrants, for the firſt time, reſolved to ſettle themſelves, and to perpetuate the plantation.'

Thus, at the expiration of twelve years from their ſettlement, was given to the Virginians, by the company, a local legiſlature, in which they were repreſented. They received that with gratitude, we have ſeen, as a favour, which they might have claimed as one of the invaluable rights that they carried with them as Engliſhmen. The charters, which empowered the corporation to make ordinances for the rule and correction of the coloniſts, were undoubtedly inconſiſtent with every ſound principle of the conſtitution; becauſe, at no one period of the Engliſh annals, could a king of England rightfully legiſlate for his ſubjects, ſince they were not bound by rules of action preſcribed by any other authority than the great council of the ſtate, which carried with it the conſent of the whole: And the ſovereign could not delegate to others what he did not himſelf poſſeſs. The forms, whether ariſtocratic or monarchical, under which the people had ſo long groaned, were ſtill more invalid; becauſe they were derived from a power which was itſelf altogether illegal. Had the parliament, actuated by the ſpirit which we ſhall find animating the commons in 1628, when they paſſed a bill to give validity to a ſimilar patent of the Bermudean company, confirmed the charters before-

fore-mentioned, what was ſo extremely doubtful would have become the law of the ſtate, and the emigrants would have been governed by the ſame authority in their new as they had been in their ancient ſettlements. Had the parliament continued to legiſlate for them, with regard to all the minute particulars which new habits, different ſituations, and change of circumſtances, required; had a revenue been at once eſtabliſhed for all the local uſes that continually might ariſe; no aſſembly had been neceſſary. Under ſuch a regimen Virginia would have only required a ſupreme magiſtrate to carry into effect the rules preſcribed by the ſovereign legiſlature: And the coloniſts would have enjoyed ſimilar rights, and would have been equally free, as the numerous fellow-ſubjects which remained within the realm, and were in the ſame manner precluded from giving their ſuffrages. The ſecurity and freedom of both would have ariſen from the mixed nature of the government, which neceſſarily produces oppoſition to the executive power; from the excellent balance of the conſtitution, which offers ſo many checks to the ſpirit of domination; from the reſponſibility of miniſters, which, in modern times, forms the beſt barrier of any againſt oppreſſion. But it was impoſſible in thoſe days, and it is more ſo in the preſent, for the parliament to extend their legiſlative care to the various little wants of an inconſiderable colony; to the making of roads; the building of churches; to the affording of remedies for inconveniences which alteration of circumſtances daily brought forth: Time would have failed: And, uninſtructed in their minute affairs, the proviſion would not have been always adequate to their neceſſities. Hence a local legiſlature for local purpoſes became neceſſary. We have ſeen the ſource from which the Virginians derived theirs; and the legiſlative body from which, with a ſpirit degraded by oppreſſion, they begged for "a "proper form of laws ſuitable to their condition." And from that epoch, when the colonial liberties were ſunk to the loweſt point of depreſſion, we may trace them in their gradual riſe and exaltation to the æra of revolt.

Meanwhile, the treaſurer and company were neither unmindful of the affairs of Virginia nor negligent in promoting them. Meaſures were taken, as well for collecting the orders of the company, that every one might

might know what he was bound to obey, as for eſtabliſhing that body of laws which the aſſembly had ſolicited as the greateſt of bleſſings. A conſiderable emigration was tranſported at a prodigious expence: And, in order "to ſettle the minds of the coloniſts, and to induce them to make "Virginia their place of reſt and continuance," it was propoſed to ſend thither one hundred maids, as wives for them: Ninety girls, "young "and uncorrupt," were tranſported in the beginning of the year 1620; and ſixty more, "handſome, and recommended for virtuous demeanour," in the ſubſequent year: And almoſt all theſe were immediately bleſſed with the object of their wiſhes. The price of a wife to the huſband, who purchaſed her, was one hundred pounds of tobacco, for each of which there were then allowed, in money, three ſhillings; but, with the increaſe of the demand, it roſe by degrees to one hundred and fifty pounds: And it was juſtly eſtabliſhed, as a fundamental law, "that the price of a wife "ſhall have precedence of all other debts in recovery and payment, be-"cauſe this merchandiſe of all other was deemed the moſt deſirable." Having thus provided wives for the Virginians, the treaſurer and company naturally turned their attention to the education of children. They prepared to erect a college, which they amply endowed with lands; they ſent tenants to cultivate them: And James, with an attachment to the cauſe of learning and to the inſtruction of his diſtant ſubjects, that does honour to his memory, ordered collections to be made for it in the dioceſes of England; by which means very conſiderable ſums were procured.* But the effectual execution of that ſalutary project was reſerved for the hands of William and Mary.

It is to James, however, that the nation and the colonies owe the policy, whether ſalutary or baneful, of ſending convicts to the plantations. From him the treaſurer and council received a letter, in the year 1619, "commanding them to ſend a hundred diſſolute perſons to Vir-"ginia, which the knight-marſhal would deliver to them." And, in obedience to the royal mandate, they reſolved to tranſport them as ſervants, though at a conſiderable expence. Whatever offence a ſimilar policy has given the coloniſts in modern times, "thoſe diſſolute perſons," if we may credit their hiſtorian,† "were then very acceptable to them."

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The good ſenſe of thoſe days, juſtly conſidering that their labour would be more beneficial in an infant ſettlement, which had an immenſe wilderneſs to cultivate, than their vices could poſſibly be pernicious. The only law, which at that time juſtified the infliction of expulſion as a puniſhment, was the ſtatute of Elizabeth;[4] which enacted, "that dan-" gerous rogues might be baniſhed out of the realm:" But, from the circumſtances of that tranſaction, it is probable that the obnoxious men above-mentioned were tranſported agreeably to the genius of the adminiſtration of that reign, by prerogative.

The treaſurer and company began at length to reap ſome profit from an enterpriſe which had hitherto rewarded all their labours with fruitleſs cares and expence. They imported from Virginia, during the ſummer of 1619, twenty thouſand pounds of tobacco; which was the whole crop of the preceding year.[5] But a new ſcene of ſorrow opened on them, which cloſed only with the diſſolution of the corporation. Irregularities, prompted by hope of gain, were then very frequently committed in the national commerce, as they have been at all times ſince; and the reigning prince being informed, "that divers conceal and utter " tobacco without paying any impoſt, notwithſtanding any ſtatute to " the contrary," in May, 1619, prohibited, by proclamation,[6] the ſale of that commodity, in groſs or retail, either in England or in Ireland, till the cuſtom ſhould be paid, and the royal ſeal affixed. When the importation above-mentioned was made, the farmers of the revenue, making a general rate of the value of the commodity at ten ſhillings the pound, becauſe Spaniſh tobacco was uſually ſold at eighteen ſhillings, demanded a duty of ſixpence for that of the company; and they ſeized the merchandiſe till the impoſt was paid. After the uſual altercation with the farmers, and a hearing before the privy-council, it was at length ordered to be delivered up, upon payment of all lawful duties. By the charter of 1611, the treaſurer and company were exempted from all taxes for ſeven years; but this term was now expired. By the patents of 1606 and 1609, an exemption was granted of all ſubſidies for one and twenty years, "except only the five pounds in the hundred due for " cuſtom, according to the ancient trade of merchants." This duty

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was assuredly payable by virtue of the act[7] of tonnage and poundage, which passed in the first year of the present reign; though that prince, turning his face from the parliamentary grant, considered the custom as due, according to the ancient trade of merchants; and the taxation reserved by all the colonial grants above-mentioned was consequently that of the legislature. The only disputable point, it should seem, was with regard to the true value of the merchandise; and the treasurer and company were finally obliged to pay the sixpence a pound assessed by the farmers.

The reigning monarch, who was actuated rather by his singular dislikes, than by sound policy, or a just regard to the privileges of his subjects, reflecting on the daily consumption of the wealth of the kingdom, and diminution of the health of the people, in December, 1619, prohibited the growth of the plant before-mentioned in England. Early in the subsequent year he appointed special commissioners[8] "for garbling "the drug called tobacco;" giving as a reason, in support of this measure, "that he continued of the same mind to preserve the health of the "subjects, and that the good may be distinguished from the bad." What vexations, what discouragements, must not traders have experienced from the exercise of an authority altogether arbitrary, since over the men, who were thus appointed the inspectors and judges of their property, they had no controul; and strange had it been, in that age of universal monopoly, had there not arisen one of a drug thus contemned and persecuted! In order to reduce the commerce of it into the hands of able persons, who might manage the same without inconvenience, a fresh proclamation was issued in June, 1620, prohibiting the importation of tobacco without licence under the great seal; and the opposers of the royal command were threatened with prosecutions in the Star-chamber.[9] These measures, so characteristic of the administration of those days, affected equally the interest of the adventurers in England, and the prosperity of the plantation. While the treasurer and company refused the farm of the impost on that branch of trade, in order to avoid the embarrassments which they foresaw, they agreed to pay twelvepence a pound on the importation of that commodity, provided the proclamation,

proclamation, prohibiting the planting of it in England, ſhould continue in force:[10] And this condition was equally neceſſary and prudent. For a royal edict, ſo contrary to national intereſts, did not eſcape the notice of the commons; who reſolved, in the ſubſequent year, that it was againſt the freedom of the ſubject." How extraordinary and illegal ſoever may now appear thoſe exertions of prerogative, ſuch proclamations were extremely common in thoſe days, and ſeem to have commenced during the reign of Elizabeth. For, in a debate on public grievances in the ſeſſion of 1621, Sir Edward Cooke aſſerted: "That never till within theſe for-"ty years was there any reſtraint made, other than by act of parliament, "that a ſubject, being a freeholder, ſhall not plant what he liſt in his "own ground."" Were it not that the human mind naturally reſiſts the object of its diſlike; were it not that the overweening ſenſe of his own wiſdom made James deſpiſe the judgement of others; we ought to expect that the ſtrong aſſertions of the wiſeſt lawyers and ſtateſmen, the firm reſolutions of the commons, would have prevented the future promulgation of ſuch legiſlative ordinances, or at leaſt have taught that prince, and his ſucceſſor, moderation and caution in the uſe of them.

The year 1620 is remarkable in Virginian annals for the introduction of freedom into colonial commerce; and, by bringing with it competition, which never fails to invigorate the exertions both of buyers and ſellers, it had the moſt beneficial influence on affairs. Before that time the traffic of the colony had been engroſſed by the company alone. All conſignments ſeem to have been made to its factor, who ſold the manufactures of Europe, and tranſmitted in return the products of Virginia. But the treaſurer and company, finding little real advantage to reſult from a monopoly which depreſſed the ſettlement, now laid the trade of that ancient dominion open to every one; and, as no law precluded the Hollanders from prowling in ſearch of gain, they ſoon found their way to that country. This is the ſad epoch of the introduction of African ſlaves into the colonies. A Dutch veſſel then carried thither a cargo of Negroes: Dutchmen firſt trafficked in human fleſh; and the Virginians, who had juſt emerged from a ſtate of ſlavery themſelves, firſt reduced their fellow-men to the condition of brutes.[11] The ſecond aſſembly was

convened in May; and, among other objects which engaged its attention, the church ſeems to have attracted its peculiar care. The eleven hundreds, into which the colony had been divided, were now erected into ſo many pariſhes; the ſtipends of miniſters were ſettled at fifteen hundred pounds of tobacco, and fifteen barrels of corn, which were ſuppoſed to be equal in money to two hundred pounds: Yet theſe meaſures, and the paucity of miniſters, who did not then exceed five in number, demonſtrate the deplorable ſtate of religion, though the company, with a laudable piety, had granted conſiderable encouragements. As the coloniſts had now acquired freedom and property, they became extremely ſolicitous with regard to the defence of both; and, when they conſidered the unfortified ſtate of the country, they ſolicited the treaſurer and company to ſend them engineers to raiſe fortifications, promiſing to bear the charge of what was then deemed ſo advantageous to themſelves: [14] And future events demonſtrated the prudence of their preſent conduct.

A parliament aſſembled in January, 1621: The deliberations of which are extremely intereſting to Engliſhmen, becauſe thoſe diſputes were then agitated, which ended at length in the improvement of the conſtitution. The main errand, to ſpeak truly, ſaid James, why I called you together, is for a ſupply of my urgent neceſſities, in urgent cauſes: And they unanimouſly granted, on that extraordinary occaſion, two ſubſidies, amounting to about one hundred and ſixty-four thouſand pounds. [15] But the chief object which engaged the deliberations of an aſſembly, compoſed of the profoundeſt lawyers and ableſt ſtateſmen to be met with probably in the Engliſh annals, was the redreſs of the various grievances which then depreſſed the nation. In a committee of the commons, "concerning the decay of money in England," it was urged by Sir Edwin Sands: That the fountain of money is Spain, and we have had annually from that country, by traffic, one hundred thouſand pounds; but now we have our returns from it in tobacco: That it will be a double profit for us to divert the bringing of that commodity from Spain, and to cauſe it to be brought from Virginia and the Somer-iſles. For thereby we ſhall enrich thoſe countries under our dominion, and England will be better ſtored with money, when we take our returns in bullion from

from Spain."[16] This is the firſt inſtance, which occurs, of the modern policy of promoting the importation of the commodities of the colonies, becauſe they were "countries under our dominion," in preference to the productions of foreign nations: Nor could a ſtateſman or merchant of the preſent days, aided by experience, have reaſoned more juſtly on the nature of trade, or the uſe of colonies. It was, nevertheleſs, warmly contended by ſome, who were actuated more by prejudice than policy, that tobacco ſhould be wholly baniſhed out of the kingdom; otherwiſe, ſaid they, it will overthrow one hundred thouſand men in England. For, it is now ſo common, that ploughmen take it as they are at plough. The deputy-chairman of the Virginian company replied: That, if we baniſh all, then the four thouſand men now in Virginia will periſh; they having there as yet no other commodity. The houſe at length reſolved; "that "all foreign tobacco ſhall be barred; but that of Virginia, or any of the "king's dominions, ſhall not be held foreign:"[17] And, accordingly, "an act for the reſtraint of the inordinate uſe of tobacco" was ſoon after brought in. Its proviſions are extremely remarkable: No tobacco was to be imported after the 1ſt of October, 1621, but from Virginia and the Somer-iſles; and, after that day, none was to be planted in England: There were to be paid to the king, for cuſtom, ſix-pence a pound, in conſideration of the loſs he might ſuſtain in his revenue: None was to be ſold by the merchant for more than eight ſhillings, and, by the retailer, none for more than ten ſhillings, the pound: But, "ſuch as ſell "tobacco by the pipe may make the moſt they can." This ſingular bill, wherein there is ſo much policy, conſidering the manners and temper of the times, after various debates and admendments, which naturally aroſe when each thought it his duty to ſpeak the ſentiments of his heart, was paſſed in May, 1621.[18] But, like much of the important buſineſs of that ſeſſion, it was blaſted by the ſame ſpirit which had overſpread the land with monopolies, ſo deſtructive of commercial ardour.

The unwiſe, not to ſay unconſtitutional, meaſures of James embarraſſed not only the company but the plantation; and individuals had ſuffered prodigiouſly, no leſs from the irregularity of his conduct than from the excluſive regulations before-mentioned. To be relieved from theſe grie-

vances, they applied to parliament for redreſs, who received their petition with the attention due to the oppreſſed. During the debate on this ſubject, two planters of Virginia complained of the irregularities of the farmers of the revenue: "The barbarous uſages of divers others that "have brought in tobacco" were alſo mentioned. And a committee was appointed "to examine this buſineſs, and to conſider in what man-"ner to relieve them; with power to ſend for the patentees, and to ſee "the patents."[19] Yet, owing to cauſes which do not appear, though they may be eaſily conjectured from the nature of the complaints, which ſo immediately tended to impeach the conduct of royal officers, thoſe applications did not receive the relief that was prayed for; though the commons exerted the laudable ſpirit of the great inqueſt of the ſtate.

Thus wronged and diſappointed of the hoped-for remedy, the treaſurer and company once more addreſſed a petition to the humanity of their prince: But, though his anſwer was gracious, he gave them only unſubſtantial profeſſions of regard for them and of love for the colonies. And neceſſity at length diſcovered a remedy for thoſe evils, which even intereſt had been unable to prevent or to cure. They procured warehouſes and appointed factors at Middleburgh and Fluſhing. They compounded with the magiſtrates of theſe towns, at the rate of a penny a pound on the import, and the ſame on the export, of their only merchandiſe. And, to the diminution of the cuſtoms; which was ſoon extremely felt; and, to the injury of the national trade, no Virginian products were imported into England during the year 1621; all were ſent to Holland, and there diſpoſed of. Thus the intereſt of the nation, the utility of the colonies, the rights of individuals, were all ſacrificed at the ſhrine of miſtaken policy, of arbitrary will. The Virginians, in the moment of their diſtreſs, tranſmitted a petition to James, in ſtyle and ſentiment very different from thoſe of recent times: "They beſought him, in his princely com-"paſſion, either to revoke that proclamation and to reſtore them to their "*ancient liberty*, or elſe to ſend for them home, and not permit the hea-"then to triumph over them."[20] But before it arrived, a defalcation of the revenue had inſpired that wiſdom which experience had been unable to impart: And, though too late, he became ſenſible of an error that had

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proved extremely inconvenient. The deputy and others of the company received "an angry rebuke" from the privy-council; and they were required to anſwer, whether they would bring their commodities to England or continue their trade in the Low Countries. They were again ſolemnly heard at the council-board: But their arguments did not convince predetermined minds." And an order was iſſued, in October, 1621, commanding, "that no tobacco, or other productions of the colonies, "ſhall thenceforth be carried into foreign parts, till they are firſt landed "in England, and the cuſtom paid:" The privy-council aſſigning theſe remarkable reaſons; "that the king, weighing the great advantage "which this crown and ſtate might receive from a well-ordered plantation "in Virginia, granted ſeveral immunities to the colonies, as not doubting but that they would apply themſelves to ſuch courſes as might "moſt firmly incorporate that plantation into his commonwealth; that "to ſuffer therefore a foreign trade is as inconſiſtent with the view in "the planting of Virginia as with juſt policy or the honour of the "ſtate."[22] The deputy and council, offering ſome reaſons to ſhew the impropriety and hardſhip of this order, were told, in the ſtern language of thoſe days, "that they were not to diſpute, but to obey."[23] Here then were for the firſt time diſcloſed all thoſe principles of policy, with regard to the colonial trade, which were carried into execution by an act of the legiſlature at a ſubſequent day.

Yet the order above-mentioned, being either diſregarded or eluded, did not prove ſucceſsful. Not only was tobacco ſtill ſent from Virginia, but from the Somer-iſles, to Holland. And the former prohibition was renewed in March, 1622, and extended.[24] The governor and coloniſts were required to prevent as well the like practices in future, as to procure the return of thoſe ſhips which had been lately ſent to foreign parts, "upon thoſe penalties that the contemners of the authority of the board "may expect." The colonial officers were commanded to publiſh this order in their ſeveral courts, "and to look that it be executed." And it was tranſmitted to Virginia, ſays its hiſtorian, for the information of the people, that they might know how to comport themſelves therein.[25] If this regulation, ſo different in principle and extent from thoſe of later times,

times, ſo much complained of, and ſo outrageouſly reſented, were not altogether contrary to the charters, which had reſerved a legiſlative power to the king; yet, as no grant of the prince can diveſt the people of their birthrights, the edicts of the privy-council before-mentioned may well be pronounced wholly unconſtitutional. Not only did that board exerciſe in thoſe days a legiſlative but a judicial authority of original juriſdiction. Complaints were then frequently made to it againſt the company and the coloniſts: And redreſs was as often given as applied for.[16] But though thoſe powers, ſo contrary to every ſound principle of the law of England, have been long exploded as illegal, the former exertions of them demonſtrate the greatneſs of the authority which that body exerciſed over the plantations.

Mean while the treaſurer and company carried into execution, in July, 1621, the reſolution which they had formerly taken, for eſtabliſhing a proper conſtitution for the colony. They paſſed an ordinance, which is no leſs remarkable for the wiſdom of its proviſions than for being the principal ſtep in the progreſs of freedom. It declared, that henceforward there ſhall be two ſupreme councils in Virginia; the one to be called the council of ſtate, which was to be appointed and diſplaced by the treaſurer and company, and which was to aſſiſt the governor with advice in the affairs of government; the other was to be denominated the general aſſembly, which was to conſiſt of the governor, of the council, and of two burgeſſes, to be choſen, for the preſent by the inhabitants of every town, hundred, or ſettlement in the colony. The aſſembly was empowered to conſult and determine of the public weal by the greater part of the voices then preſent, and to enact general laws for the government of the colony, reſerving to the governor a negative voice: And both the aſſembly and the council of ſtate were required to imitate and follow, in their deliberations, the policy of the form of government, laws, cuſtoms, and adminiſtration of juſtice, which are uſed in the realm of England. With a good ſenſe and equality, which degrade modern theories of colonial legiſlation, it declared, "That no acts paſſed by the aſſembly ſhould "be in force till confirmed by the general court in England, and the "ratification returned under its ſeal; that, on the other hand, no or-

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" der of the general court ſhould bind the colony, till aſſented to by the " aſſembly."

Such then is the ſubſtance of the ordinance, on the baſis of which has been erected the conſtitutional government of that dominion, and from which its aſſembly has derived all the power and importance of the preſent times. Yet it is extremely remarkable, that among all the privileges hitherto granted to the treaſurer and company, and by them to the coloniſts, no authority was given to impoſe taxes within Virginia. As the exerciſe of this important power may be regularly traced from the Reſtoration, perhaps nearly from the eſtabliſhment of aſſemblies, whence did the legiſlature derive the right? After the coloniſts had acquired property, each individual might have diſpoſed of his poſſeſſions as he thought proper, becauſe this privilege was inſeparably annexed to ownerſhip. When the ſame individuals were formed into aggregates, they aſſuredly poſſeſſed the ſame power, becauſe they brought with them all the rights of the individuals. When, by the progreſs which has been noticed, an aſſembly of the coloniſts was eſtabliſhed, and, from the paucity of numbers, almoſt every man was preſent who was free and an owner, that body certainly had a right to exerciſe all the authority of the aggregates, becauſe it was compoſed of them, and its powers would have been incompetent to the purpoſes of its meeting, which were to agree on common meaſures, for the intereſt, the ſafety, and protection of all. The aſſembly, therefore, forming the body politic of this infant people, poſſeſſed and exerted all the rights of the whole. And what man, whoſe underſtanding was not perverted by theory, or ſyſtem, or party, ever aſſerted, that the whole of a people might not appropriate a part of the property of every individual for the defence of what remained, and the rights of his perſon, which is ſtill more intereſting. The governor and council of ſtate, who were thus appointed by the treaſurer and company, and who formed eſſential parts of the aſſembly, could however be deemed with little propriety the repreſentatives of the inhabitants; nor could the burgeſſes, who were choſen by them, exerciſe or claim any peculiar power over the purſes of the people, till they ceaſed to vote in the ſame apartment with the other two, and formed a diſtinct branch of the legiſlature.

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The Virginian aſſembly, therefore, muſt have deemed the right of taxation to have reſulted to it from the ſame principle whence it is derived in every community on earth. It is the legiſlative power, becauſe there the authority of the ſtate is repoſed, that alone rightfully exerciſes the ineſtimable privilege of impoſing taxes any where. And that aſſembly has for ages exerted the ſame privilege for internal purpoſes; becauſe, it was the legiſlature of the colony, though dependent and inferior; ſince it was neither ſovereign nor co-ordinate.

With that ordinance, and inſtructions tending to promote the religion, the morality, the loyalty, the œconomical purſuits, of the coloniſts, the treaſurer and council diſpatched Wyat, as governor, in July, 1621, in the room of Yeardley, whoſe commiſſion expired by effluxion of time. Yet, alas! what availed every immunity, which was then conferred, or which was acquired in ſucceeding times, if the Virginians did not enjoy any perſonal ſecurity, that includes ſo many intereſting rights! And what freedom can a people be ſaid to poſſeſs, if the individual hath not an adequate remedy when his perſon is improperly reſtrained! The coloniſts did not aſſuredly in thoſe days poſſeſs the remedy, and conſequently enjoyed not the right, till the reign of Anne: And, if we may credit the two houſes of aſſembly, they received with gratitude, as a favour, the extenſion of the invaluable habeas corpus act, which, as Engliſh ſubjects, they were juſtly entitled to as their birthright.[28] The perſons of the coloniſts being thus emancipated, we ſhall find the reign of Anne, in the ſame manner, the happy epoch when their minds were equally ſet free, by the eſtabliſhment of the *liberty of the preſs*. And theſe we ſhall diſcover to be, by far, the moſt important ſteps in the progreſs of their privileges to their preſent extent.

The reſources of the treaſurer and company, owing in ſome meaſure to the embarraſſments before-mentioned, were far from equal to the greatneſs of their project and to the expences of their numerous officers. And neceſſity compelled them to adopt a meaſure, which good policy ought to have dictated from the beginning: They offered territory to thoſe, who ſhould either emigrate themſelves, or engage to tranſport people to the colony. Upon ſuch conditions, fifty patents, containing conſiderable

tracts

tracts of land, were granted during the year 1621. And ſo ſucceſsful had been this policy, that upwards of three thouſand five hundred perſons emigrated to Virginia during that and the two preceding years. Actuated partly by ſound policy, but more by his prejudices, James ſtrongly urged the company to cauſe the coloniſts to turn the courſe of their labour to the raiſing of ſilk, which he inſiſted was a more ſolid commodity than tobacco, which, beſides the expence, introduces the greateſt diſorders: And the royal recommendations were tranſmitted to Virginia, but to no purpoſe. French vignerons were at the ſame time ſent thither, becauſe the country was ſaid to be proper for vines; yet this project has hitherto proved equally unſucceſsful.[9] And ſo difficult is it to change the favourite inclinations of a people, that the treaſurer and company publiſhed edicts to regulate the cultivation of that plant, the production of which they could not altogether prevent. Wyat, the governor, no ſooner arrived, than he ſent a deputy to confirm former leagues with the tribes: But, the ſeeming ſatisfaction with which they aſſented to this meaſure, and profeſſed their content that the Engliſh ſhould inhabit the country, inſpired a ſecurity and inattention at which prudence revolted, and which ſoon engendered calamities, fatal and deplorable.[10]

The diſputes with regard to tobacco, between James and the treaſurer and company, the riſe and progreſs of which we have ſeen, were cloſed by compromiſe in the beginning of the year 1622. They were now to enjoy the ſole importation of it; he was inveſted with the abſolute property of one third, and with a duty of ſixpence a pound on the other two thirds. But the experience of a twelvemonth having convinced both parties that this extraordinary agreement was not only deſtructive of itſelf by its extravagance, but ruinous in the higheſt degree to the colonies, it was diſſolved after great debate and conſideration. That prince now conſented to receive, in future, a duty of nine-pence, in lieu of all charges; they were ſtill to enjoy the ſole importation, upon this expreſs condition, "that the whole productions of the colony ſhould be brought "to England." The merchandiſe, which had been imported by individuals from the Somer-iſles, and which had been ſeized by the farmers of the cuſtoms, was ordered to be delivered to them, upon paying the

duty of nine-pence a pound."[31] The wiſe remarked: "That when the "poverty of the prince ariſes chiefly from the extreme parſimony of the "people, the diſgrace of the one, and the vexation of the others, muſt "neceſſarily be the reſult."

The colony, in the mean time, notwithſtanding every obſtruction, natural and artificial, increaſed gradually in numbers and in opulence. Various and diſtant ſettlements had been now eſtabliſhed along the banks of James-River, as the advantages of the country, or the caprice of the inhabitants, had directed; and it was conceived to be extremely inconvenient to bring all cauſes for determination before the governor and council at James-Town. In order therefore to render the adminiſtration of juſtice more commodious and cheap, inferior courts were erected at proper diſtances:[32] And this laid the foundation of the county-courts of modern times. Yet that meaſure, which at firſt view appears ſo ſalutary, by encouraging the inclination of the coloniſts for diſperſed habitation and diſtant ſettlement, produced a weakneſs and inſecurity that well nigh buried the honours of Virginia for ever in the grave. Murders, both on the part of the Engliſh and the Indians, were committed ſometimes then, as they have been at times ſince, notwithſtanding every preventive: By the former they were ſoon forgotten; by the latter they were eternally remembered, and every freſh recollection incited a new deſire of revenge: And the year 1622 has been rendered extremely remarkable, in Virginian annals, by a moſt barbarous maſſacre of the coloniſts by the natives; which was executed with all the cunning and cruelty peculiar to that ſavage people. No regard was paid by them to age, or ſex, or dignity: A well-concerted attack on all the ſettlements deſtroyed, in one hour, and almoſt at the ſame time, three hundred and forty-ſeven perſons, unreſiſting and defenceleſs.[33] A long train of woes to both was at that time laid. A conſuming war enſued. And a repetition of mutual wrongs hath tranſmitted to their poſterity mutual abhorrence. When the Indians of the preſent day would expreſs their hatred and fear of the Virginians, they call them "the long knife." Nevertheleſs, it ought to be obſerved, that the emigrants, notwithſtanding the humane inſtructions of their ſovereign and the prudent orders of the company, had never

never been ſolicitous to cultivate the good-will of the aborigines; and had neither aſked permiſſion when their country was occupied, nor had given a price for invaluable property, which was taken without authority. To the horrors of maſſacre were ſoon ſuperadded the miſeries of famine. Of eighty plantations, which grew faſt to completion, only eight remained: And of the numbers, which had been tranſported thither, at ſo great an expence, only eighteen hundred ſurvived thoſe manifold diſaſters.[14]

Tidings of theſe deplorable events no ſooner reached England than the privy-council, with an attention and humanity which deduct much from its general irregularity, ordered an inſtant contribution of the adventurers for the relief of that ſignal calamity. Upon application of the treaſurer and company, arms from the Tower were delivered them: And ſeveral veſſels were ſoon diſpatched with every thing which could alleviate complicated diſtreſs.[15] The news of theſe misfortunes embittered the cup of diſſenſion which the company had lately drunk to the lees. Not only was it greatly embarraſſed by the irregular interference of the privy-council, but its affairs were diſtracted by two violent factions which contended for the ſupreme direction. Theſe aſſumed the regular appearance of the court and country parties; the one, headed by the Earl of Warwick, promoted the views of the former; the other, led by Lord Cavendiſh and Sir Edwin Sandys, ſupported the intereſts of the company. And their animoſities affected, in a high degree, not only their own tranſactions, but the quiet and proſperity of the plantation.[16] Frequent complaints were made to James of the oppreſſions of the treaſurer and company. The calamities, which had lately laid waſte Virginia, were attributed to their miſconduct or neglect. And not only they, and the corporation of the Somer-iſles, but all thoſe who had complained of the oppreſſion of either, were heard before the privy-council, in April, 1623. After conſidering the allegations of all parties, it was determined, that a commiſſion ſhould iſſue to enquire into the affairs of Virginia and the Somer-iſles, from the earlieſt ſettlement of both. What ſums of money had been collected for theſe colonies; how theſe had been expended; the grievances of which all complain; who preys on the inhabitants by

extortion; their preſent condition; all were objects of that enquiry, which was now directed as the foundation of future meaſures. But, that the planters might not, in the mean time, "be diſcouraged by pri-" vate ſuggeſtions," all letters to them, but thoſe of buſineſs, were prohibited: And the treaſurer and company were ordered to requeſt the coloniſts to live in that amity "which becomes believers of ſuch a religion, "and the ſubjects of ſuch a king."[37]

The commiſſion of enquiry was not deemed either ſo conſiſtent with the proſperity of the colonies, or the deſigns of the company, as to merit their approbation or aid. It was armed with an inquiſitorial power over their charters, their books, their writings, which they were ordered to exhibit to the commiſſioners. All private letters were required to be delivered to them: And a ſhip arriving meanwhile from Virginia, the deputy-treaſurer was commanded to ſeize the packets it brought, and to lay them unopened before the privy-council. Theſe tranſactions, ſo characteriſtic of the adminiſtration of that reign, added fuel to the flame, which then conſumed the company. The Earl of Warwick complained to the privy-council of a paper delivered to the commiſſioners, "which aſperſed him as a tool of the court." Lord Cavendiſh and Sir Edwin Sandys, avowing themſelves to be the authors of the offenſive writing, were confined in their own houſes: The council aſſigning as a reaſon, "that they were found guilty of a contempt of the "commands of the table." The treaſurer and company were at the ſame time peremptorily directed to comply with the former order, and to deliver particularly the book which they had concealed.[38] Thus evincing to all, that when the power to will and the authority to command are united, the liberty of the ſubject is endangered, or gone.

The commiſſioners of enquiry peruſed every document that could illuſtrate a ſubject dark and perplexed, and examined every perſon who could give any intelligence with regard to Virginian affairs. They propoſed a variety of queſtions to Smith, who acted ſo conſpicuous a part at the ſettlement of the country, and received ſuch full and intelligent anſwers as at once ſhewed his own profound knowledge of the ſubject, and gave them the greateſt ſatisfaction. Among various remedies, which he propoſed

poſed for thoſe evils that were ſo much lamented, two are worthy of notice: That his majeſty would pleaſe to entitle Virginia to his crown; that, by act of parliament, ſome ſmall tax ſhould be granted throughout his dominions, which would be ſufficient to tranſport ſubſtantial coloniſts, for paying only homage to the crown, and ſuch duties to the public as their eſtates increaſed and reaſon ſhould require.[39] Such then was the ſenſe of wiſe men in thoſe days: And thus they conſidered the power of the ſupreme legiſlature to levy impoſts on every territory of the ſtate as unqueſtionable, which the emigrants ought to pay in conſideration of ſervices done them. After much deliberation, the commiſſioners at length certified: That thoſe inhabitants, who yet ſurvived the late diſaſters, now lived in want and in danger; but that the country was fruitful and would produce various ſtaples were induſtry uſed, and was healthful after the Engliſh had been ſome time there; that former miſcarriages ought to be attributed to the governors and company here, who had power to direct the plantations there; which were of great importance, and would probably remain to all poſterity a monument of the gracious and happy government of that reign.[40] James did not heſitate long with regard to the plan which he ſhould adopt for the alleviation of the paſt and prevention of future miſchiefs. And the privy-council, in October, 1623, informed the treaſurer and company, "that the king, having conſidered "the diſtreſſed ſtate of the colonies, occaſioned, as it ſhould ſeem, by "their miſmanagement," had reſolved to grant a new charter, in order to reduce the government to fewer hands, preſerving the rights of individuals inviolable. And they were required to aſſemble a court of adventurers, to determine whether they would ſurrender their former grants and accept a new one: The council adding, in the ungracious language of thoſe days, "that the king was determined, in default of ſubmiſſion, to "proceed for recalling them, as may be juſt." It was in vain for the deputy-governor to inſiſt, at a ſubſequent day, "that, by their con-"ſtitution, ſuch important affairs could only be conſidered at a "quarterly court of the company." He was peremptorily ordered to proceed.[41] But the treaſurer and company refuſed to comply: And determined,

termined, with the ſpirit of Engliſhmen, to defend their rights with a vigour in proportion to the ſuppoſed importance of them."

Mean while the greater number of the adventurers were extremely alarmed when they heard of theſe tranſactions, which ſeemed to them ſo deſtructive of their intereſts; and the privy-council thought it neceſſary to declare, that the king's ſole intention was for change of government, but that all private eſtates ſhould be fully preſerved: And in order that a ſimilar alarm might not extend beyond the Atlantic, the ſame declaration was tranſmitted to Virginia." Doubting ſtill the final ſucceſs of the colony, and diſtruſting the intelligence that he had received, that prince at the ſame time ſent John Harvey, and other commiſſioners, thither, to procure information of the preſent ſtate of the plantations, for advancing the great work of reformation."

A writ of quo warranto iſſued, in November, 1623, againſt the patents of the corporation: And, upon the repreſentation of the attorney-general, that no defence could be made without its papers, theſe were reſtored. That body, being little embarraſſed with modern ſcruples with regard to its authority over property, juſtly reſolved, that the rights of all ſhould be defended at the expence of all: But thoſe who were willing to ſurrender the powers of government, in conformity to the royal intentions, complained to the privy-council of the injuſtice of a reſolution, which obliged them to contribute to the ſupport of a meaſure that they did not approve: And it was ordered, "that they ſhould be exempted, but that the coſts ſhould be defrayed ſolely by thoſe who defended the quo warranto." Judgement was given by the court of King's-Bench againſt the treaſurer and company, in Trinity-term, 1624." And thus were cancelled, by a formal proceſs of law, the patents before-mentioned. How extraordinary would ſuch proceedings appear in the preſent days! Yet they were ſo much of a piece with the general ſtrain of the arbitrary adminiſtration of that reign, that they made little impreſſion at the time, though the Virginian company was compoſed of perſons of the firſt quality, wealth, and conſequence, in the nation.

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The colonial hiſtorians have deplored that intereſting event with the ſame zeal as if the fate of the colony had depended on the diſſolution of the charters. Nevertheleſs, the length of its infancy, the miſeries of its youth, the diſaſters of its riper years, may all be attributed to the monſtrous government under which it ſuffered. Hiſtory, both ancient and modern, evinces what unexperienced reaſon would infer, that no plantation ever took deep root, or advanced to maturity, under the influence of the intereſted edicts of a commercial combination. And the aſſembly of Virginia, after it had taſted the ſweets of a ſimple government, oppoſed, with a firm ſpirit, during the ſubſequent reign, the attempts of thoſe who endeavoured to revive the patents, and to reſtore the corporation. While the wiſeſt of thoſe days exerted their talents, with a laudable ardour, to diſcover the moſt efficacious remedy for thoſe diſeaſes which waſted the coloniſts, they propoſed, with the uſual refinement of ſtateſmen, every reſtorative except the true one, becauſe it was ſimple. Nothing was there wanting to eſtabliſh their proſperity, their happineſs, their final ſucceſs, but an aſſurance of general protection, of unqualified permiſſion to manage their own affairs their own way.

The Virginians, being animated in the mean time by the timely ſupplies from England, diſplayed a vigour in deſign and action, which men, when left to themſelves amid dangers, never fail to exert. They rejected the timid counſels of thoſe, who adviſed them to abandon their ſettlements and to retire to the eaſtern ſhore of Cheſapeake. They not only reſiſted the attacks of their implacable enemies, but, with the accuſtomed bravery of Engliſhmen, purſued them into their faſtneſſes. And now, for the firſt time, the aborigines receded from the rivers and from the plantations around; leaving their opponents in poſſeſſion of the territories that their ſwords had won.[46] Yet the coloniſts were by no means happy and free from internal aggrievance, though their ſpirit had thus driven the tribes from their borders. Notwithſtanding the ordinance beforementioned, the governor exerciſed very oppreſſive authority; ſo difficult is it to reſtrain delegated power within reaſonable bounds. He alone exerted the power of impoſing duties on the freemen, for the building of caſtles, for the payment of public debts, and for various other purpoſes.

ſes. In order to remove grievances, which were felt and deplored, an aſſembly was once more convened in February, 1624.[47] And now "the "preceding orders and proclamations of the governor and council" were enacted into laws; which are the oldeſt legiſlative rules of action now remaining upon record. Various regulations with regard to the church of England and miniſtry were piouſly eſtabliſhed, to which all perſons were required to yield a ready obedience. With regard to the governor's former power, it was declared; "that he ſhould not impoſe any taxes on "the colony otherwiſe than by the authority of the general aſſembly; "that he ſhould not withdraw the inhabitants from their private labour "to any ſervice of his own." Here then we ſee a wide ſtep in the progreſſion of Virginian liberties: The aſſembly, for the firſt time, acquired the right of participating with the governor in the power of taxation; yet far was this from claiming the ſole right of granting money for public purpoſes, and ſtill farther from poſſeſſing any privilege excluſive of parliamentary juriſdiction.[48] The burgeſſes, envying the immunities of the counſellors, declared, that they too ſhould be free from arreſt during the ſitting of aſſembly; which enabled them to extend their authority during the courſe of ſubſequent events. A variety of other meaſures, tending either to reſtrain former evils, to prevent future inconveniences, or to direct the purſuits of the inhabitants, were then purſued: While the introduction of new ſtaples were zealouſly injoined, their old one was improved by requiring, "that men ſhould be ſworn, in every plantation, "to cenſure the tobacco."[49] And the laws of that ſeſſion do honour to the good ſenſe, the prudence, the real patriotiſm of men, who, without the leaſt tincture of faction, were animated alone with deſires to promote the genuine intereſts of the colony.

The royal commiſſioners, having arrived in the beginning of that year, executed their truſt with great zeal and induſtry. They endeavoured in vain to procure an addreſs to the king, from an aſſembly, in which ſo many of the company's officers ſat; profeſſing "its willingneſs to ſub-"mit itſelf to his princely pleaſure in revoking the ancient patents."[50] That body tranſmitted, however, a petition to James on that occaſion; acknowledging its ſatisfaction that he had taken the plantation into his

more

more eſpecial care: It beſeeched him to continue, and even farther confirm, the then form of government; to grant to Virginia and the Somer-iſles the ſole importation of tobacco; which contemptible weed was not affected as a thing deſirable in itſelf, but as a preſent means of ſupport. Should it pleaſe that prince to lend the promiſed aid of ſoldiers, it ſolicited that the governor and general aſſembly might have a voice in their diſpoſal; becauſe none could direct their operations ſo advantageouſly as thoſe who were perfectly acquainted with the country.[51] Yet how diſtant is this from inſiſting that the generaliſſimo of the empire can ſend no troops to the colonies without the aſſent of a local legiſlature! A repreſentation was at the ſame time tranſmitted, by a ſpecial agent, to the privy-council, who was empowered to ſolicit the affairs of the colony. It deſired that the cuſtom on one third of the colonial labour might be reduced to five in the hundred, according to the expreſs tenor of the original charters. It profeſſed not to ſee the ruin that was ſaid to threaten the coloniſts as the government then ſtood: And, above all, it requeſted that the people might ſtill retain the liberty of their general aſſemblies, than which nothing could more conduce to the public ſatisfaction and utility.[52] Yet it ought to be remembered that the tax abovementioned had been impoſed by the act of tonnage and poundage, and the oppreſſions ſo juſtly complained of aroſe not from any additional duty, but from the frequent change in the value of the commodity on which it was calculated by the farmers of the revenue, who are generally ſo prone to promote their own intereſts at the expence of the national commerce.

The parliament again aſſembled, in February, 1624. And the treaſurer and company, feeling themſelves too weak to reſiſt a power that had drawn to itſelf almoſt every authority in the ſtate, determined to apply to the commons for protection. They accordingly preſented a petition in April following. After ſtating at length their merits in eſtabliſhing the colony, and the undeſerved oppreſſions which they had ſuffered, "they prayed the houſe to take into its conſideration the diſtreſſed co-"lony and the oppreſſed company."[53] The debate on this ſubject was reſpited till the twenty-ninth of the ſame month; "then to hear the

"petitioners and all that will come to have voices."[54] When, proceeding on the buſineſs of the day, the ſpeaker informed the houſe, "that "he had received a letter from his majeſty concerning a petition then "before them, with regard to the Virginian buſineſs." And that inauſpicious miſſive was no ſooner mentioned than the company's petition, "by general reſolution, was withdrawn." It was the misfortune of thoſe affairs, ſays Stith, to have been brought into parliament late in the ſeſſion; and they were beſides of a very delicate nature: For the petition complained of the enormities of the privy-council, and the prerogative was ſuppoſed to be impeached.[55] The tameneſs of the commons aroſe partly from their not ſeeing the tranſactions of the times in the ſame glaring light in which the eyes of their poſterity beheld them, but more from their not knowing, nor feeling, the full extent of their own authority and power. Singular as the royal application above-mentioned may now appear, it was extremely common in thoſe days, when the king intermeddled in every material tranſaction of the houſe, though not always without the animadverſion of the moſt intelligent and zealous of the members.[56]

But, if the commons, from their deference to that prince, and their apprehenſions of interfering with the prerogative, which was held ſo ſacred till the indiſcretions of the ſubſequent reign expoſed it to univerſal contempt, did not grant the diſtreſſed colony and oppreſſed company the relief which was prayed for, they gave them very conſiderable indirect aſſiſtance. In order to favour the colonial trade, as well as to promote the national intereſts, they preſented a petition of grace to the king, agreeably to the cuſtom of the houſe in thoſe days, praying for the baniſhment of all tobacco not of the growth of his majeſty's dominions."[57] And they did not apply altogether in vain.

No ſooner were the patents cancelled than James applied himſelf, with great aſſiduity, to rebuild the fair ſtructure which he had thus laid in ruins. In June, 1624, he appointed a committee of the privy-council "to order the government of the colonies;" declaring, that it was his reſolution to renew a charter with former privileges, but with amendment of former imperfections: And, in comformity to the ſpirit of the times, the

the late deputy-governor was ordered to bring into that committee the patents, books, and writings, belonging to the late corporation.[58] In proſecution of his views, he iſſued a ſpecial commiſſion,[59] in Auguſt, 1624, "concerning the adminiſtration in Virginia." It recited the colonial hiſtory to that time: It appointed Wyat governor, and ſeveral other perſons as counſellors, during pleaſure; authoriſing them to rule the colony, and to puniſh his ſubjects, as fully as any governor and council might have done during the five years laſt paſſed. No aſſembly was mentioned, nor was any intended to be allowed; becauſe that prince deemed "ſo popular a courſe" the real cauſe of the late diſaſters: And thoſe magiſtrates were referred back for a rule of conduct to a period of the greateſt oppreſſion. Yet, while he thus eſtabliſhed a real tyranny, he not long after enacted regulations of the greateſt advantage to that ancient dominion. To the humble petition of the parliament, to the importunities of the planters, to the advice of his committee, he ſacrificed his diſlike of tobacco; which he had ſo long purſued with unabating hate. He iſſued therefore a proclamation, in September, 1624, directing, that none of that commodity ſhall be imported into England or Ireland, but from Virginia and the Somer-iſlands, and but in ſhips belonging to his ſubjects; that none of it ſhall be planted in England, Ireland, or in the iſles to the ſame belonging. And he ſoon after gave, to the deſires of the colony, a laſt of gun-powder for its defence; which was deemed in thoſe days a preſent of conſiderable value. But thoſe ſalutary regulations were too feeble to guard againſt the temptations of intereſt: And, on the ſecond of March, 1625, a freſh proclamation was publiſhed, "for pro-
"hibiting the importation and uſe of all tobacco, which is not of the
"proper growth of Virginia and the Somer-iſles." In order, however, to reimburſe the loſs of the cuſtoms, and to repay the ſums of money which he had undertaken to advance yearly for the general protection of the plantations, the merchandiſe before-mentioned was now to be received by the royal agents at a ſtipulated price, and to be ſold by them for the royal uſe.[60] He lived not however to perform his part of the contract, which he now promiſed inviolably to obſerve. And his demiſe, a few

days after, put an end to a reign of more real advantage to his ſubjects than glory to himſelf.

It ſeems unneceſſary to review the colonial adminiſtration during the foregoing period. James I. notwithſtanding his prejudices and miſtakes, may be juſtly conſidered as the father of the Engliſh colonies; which, but for his peculiar ſpirit, had probably never been planted. Yet he aſſuredly conſidered them as countries acquired by conqueſt: He inferred from what was neither true in principle nor fact, that they ought to be holden of his perſon independent of his crown or political capacity, and might be ruled conſequently, according to his good will, by prerogative. And he endeavoured, according to the ſtrange œconomy of his reign, to convert them into a mere private eſtate, deſcendible to his perſonal heirs. But, happily, neither his opinion nor his practice changed the allegiance of the emigrants, the nature of the relation of the plantations to the ſovereign ſtate, or the laws: And the ſtrong reſolutions of the commons, with regard to both, would have inſpired wiſdom into the councils of a prince leſs fond of his own opinions. Though he had often declared, by charters, that the coloniſts and their poſterity ſhould be conſidered as much Engliſh ſubjects in their new as they had been in their ancient ſettlements; yet it was reſerved for modern times to ſee and to claim all the important rights deducible from that circumſtance alone: And they did not, in fact, poſſeſs Engliſh liberties during that wretched period of their ſtory. Too long were they governed by martial law, by the ordinances of a corporation in England, by the edicts of governors, by the royal orders: And, after they had acquired property, they did not enjoy what is of more real importance, perſonal ſecurity, freedom of thought, and of action. They ſupplicated the king, in the language of univerſal complaint, to be reſtored to their ancient liberties: They petitioned the parliament in the day of their miſeries. Yet they applied to both without effect. The coloniſts ſighed, during that reign, for a government of law, accompanied with temper and attention to the rights of men and the privileges of citizens. Their poſterity have fully enjoyed what the original adventurers prayed for in vain. But proſperity and enjoyment are

too

too ſeldom, alas! the beſt inſtructors of man in the leſſons of gratitude and content.

The final ſettlement of a permanent colony in Virginia occaſioned a lamentable waſte of the human ſpecies. Thither were tranſported, during the foregoing period, upwards of nine thouſand Engliſh ſubjects, at the enormous expence to the nation of one hundred and fifty thouſand pounds.[61] But, the diſtempers incident to ſuch a country, the deſolation of famine, the ſtrokes of the natives, thinned their numbers prodigiouſly. And we are aſſured accordingly by Smith, that of all the emigrants there remained only about eighteen hundred in the year 1625.[62] Theſe notices offer an excellent leſſon to thoſe, who, in future, may engage in ſimilar projects. For, if the eſtabliſhment of diſtant plantations is neceſſarily deſtructive of the lives of men, this circumſtance alone ought to inſpire the humane at leaſt with caution, how they promote enterpriſes ſo pernicious and fatal. If, to the numbers above-mentioned, we add about two hundred perſons, who we ſhall immediately find had neſtled on the coaſt of northern Virginia, the amount of Engliſh coloniſts, who were ſettled on the American continent, at the acceſſion of Charles I. will be two thouſand. The ſame and other cauſes continued to operate ſo forcibly, that, in 1670, forty-five years after, Virginia contained no more than forty-thouſand inhabitants. So fallible are all political reaſonings, that it yet remains a queſtion to be determined by time, what ſeems heretofore to have been decided, whether thoſe who promoted, or thoſe who obſtructed, ſuch emigrations, were the beſt benefactors to England. To exhibit the moſt ſtriking characters of nations and of men is the moſt pleaſing duty of hiſtorians. The original planters of that moſt ancient colony are ſaid, by contemporary writers, to have been "poor "gentlemen, tradeſmen, ſerving-men, libertines, and ſuch like, ten "times more fit to ſpoil a commonwealth than either to begin or main-"tain one.[63] The peculiar principles of ſuch men were naturally tranſmitted to their poſterity. And we may eaſily trace them in the pride of family, the diſſipation, the contempt of the commercial ſpirit, of the modern Virginians, attended with their uſual concomitants, gaiety of manners, hoſpitality, and munificence. It was owing chiefly to the want

want of ardour, incident to such a people, that Virginia, notwithstanding every possible natural advantage, remained for ages poor, inconsiderable, and feeble.

AUTHORITIES AND NOTES.

[1] Smith's Voyages, p. 126; — Purchas's Pilg. 4 v. p. 1775-6; and Stith's Hist. 160-1. — [2] Ib. 162-4-6. — [3] Ib. 167. — [4] 39 Eliz. ch. 4. — [5] Stith, 168-9. — [6] Rymer's Fœd. 18 v. p. 190. — [7] 1 James I. ch. 33.

[8] This curious commission is in Rym. Fœd. 18 v. p. 190-91. It empowered certain persons to establish ordinances for garbling the herb tobacco; and, with a caution which shews the opinion of those days, it provided, that, of the commissioners, there should be always present, a physician, a merchant, a grocer, and an apothecary.

[9] Ib. 233. — [10] Stith, 169-70. — [11] Com. Journal, 1 v. 579. — [12] Parliam. Deb. 1620-1. 1 v. 105-270-1. — [13] Stith, 171. — [14] Ib. 173-82. — [15] Parl. Deb. 1620-1. 1 v. p. 6-104-48, 9. — [16] Ib. 105-270, 1.

[17] The debate on this subject, which is to be found only in a book in the hands of a few, shews the opinions of the wisest men on several interesting points, and supports the foregoing reasoning.

Parliamentary debate concerning tobacco, 17th April, 1621.

Master of the Wards: — That Sir Edwin Sands, from the sub-committee, delivered to the grand-committee five heads of the decay of trade.

3dly. The importation of Spanish tobacco; for which 60,000l. paid yearly, and 60,000l. loss in commodity: So a loss of importing 120,000l. in bullion. And resolved 100,000l. yearly at least. The remedy: — To supply tobacco out of Virginia and the Somer-islands; — and to prohibit all other tobacco.

Resolved, by all the committee, Spanish tobacco might be banished. By calculation, 1000lb. wt. of tobacco spent every day in England.

18*th*

18*th April*, 1621.

Lord Cavendiſh: — That the buſineſs of foreign tobacco being put off to the committee yeſterday, no time for it. To have it reſolved now in the houſe.

Reſolved: — To have it farther debated.

Sir Samuel Sandys: — When a report by a committee, and none oppoſe it, muſt [not] be queſtioned.

Sir Edward Coke: — That this pointeth directly at Virginia. That no commodity can be baniſhed, but by act of parliament. Would have Virginia have the tobacco; but an act of parliament for it. The privy-council may do it before a parliament; but a parliament then there. Would not conſent to have the ſubject hindered from planting it here.

Sir Edwin Sands: — Concurreth for that; but for the order of the houſe as Sir Samuel Sands: And to have the reſolution of the houſe in point of remedy; *viz.* the forbidding of foreign tobacco.

Sir George Moore: — Concordat; that being the point committed.

Sir Edwin Sands: — That no words in the treaty, but free commerce; which, incident to all nations in amity. That the king hath prohibited pepper, the commodity of Spain: So whale-fins: Gold thread forbidden from Venice. That the king, by his proclamation, hath forbidden Spaniſh merchants to bring in any. A clauſe in the treaty, "to be accord-"ing to ancient cuſtoms." That the framing a bill no prejudice. That the fear of the Spaniards prohibiting the importation of our commodities of no value; for our trade with Spain in time of war is better than now. Now in Spain his payment braſs, ſometimes all; though, by law of Spain, but a third part payable in braſs. By this, 3 in the C. loſt for ſilver; and 3 in the C. to export his money. The Spaniſh commodities trifles to ours. His commodities of ſuperfluities; ours of neceſſity.

Mr. Delbridge: — That importation of Spaniſh commodity hath overthrown our trade for our commodities there; the ſhopkeepers ſelling 15 in the C. under other merchants, to return tobacco: And this is the cauſe of the falſification of our commodities here.

Sir

Sir Edwin Sands: — That all the king's ſubjects may freely trade thither [Virginia], and without licence of the company.

Sir William Stroude: — That the importation of Spaniſh tobacco a greater miſchief than we can think of. — To baniſh tobacco generally; and to allow Virginia but a certain time for it; and then to ——

Mr. Chancellor: — Doubteth this within the league: And gave his voice at the council-table, that it was within the league.

Sir Robert Phillipes: — A ground that, not to hinder ourſelves of the ſame liberty, which Spain hath taken. That Spain hath barred the bringing in of quickſilver, pepper, &c. Not to ſuffer a peace to make us poor, which is to make us rich.

Maſter of the Wards: — That tobacco a great prejudice to our ſtate beyond all queſtion. That Spain hath prohibited none of our commodities. To baniſh all tobacco, in reſpect of the decay of trade and coin by it; and the ſpoiling the ſubjects manners by it: For this cauſe to baniſh it generally; but not to meddle with expoſition of the league.

Mr. Cary: — To baniſh tobacco generally, and to help Virginia by ſome other means.

Sir Edward Sackvyle: — Fit for us to ſtudy a way for us to enrich our own ſtate. *Amor incipit a ſeipſo.* We make treaties for our own good, and not for theirs with whom we treat.

Sir J. Perrot: — Not to baniſh all tobacco, in reſpect of Virginia and the Somer-iſles. To give them ſome time; elſe overthroweth the plantation.

Mr. Solicitor: — Loveth England better than Virginia. A great hurt to all the ſtate of our kingdom. To contribute rather to Virginia otherwiſe.

Sir D. Digges: — Tobacco in the king's dominions hindereth not importation of coin: — Yet wiſheth tobacco of Virginia prove good.

Mr. Towerſon: — Except we baniſh all tobacco, Spaniſh tobacco will be brought in as plentifully as now.

Sir Richard Worſeley: — To baniſh all.

Sir Edward Sackvyle: — Not to baniſh all, till order for ſupply of Virginia; elſe all the people there undone.

Mr.

Mr. Ferrar: — Not fit to baniſh all; yet now 4000 Engliſh there, who have no means as yet to live on.

Sir George Moore: — To divide the queſtion: 1ſt. Whether to baniſh foreign; 2dly. For our own dominions.

Sir Guy Palmes: — That tobacco hindereth all the kingdom in health and otherwiſe. To baniſh all.

Mr. Pymme: — Fit to baniſh all; but not without ſome deliberation.

Sir H. Poole: — Againſt all in general: — To pull it up by the roots. To help Virginia otherwiſe.

Sir J. Horſey: — Thought not to ſpeak of this vile weed. When he firſt a parliament-man, this vile weed not known. Thouſands have died of this vile weed. Abhorreth it the more, becauſe the king diſliketh it. Prohibited to be uſed in alehouſes. No good ground for Virginia. To baniſh all.

Sir Thomas Jermyn: — Loveth tobacco as ill as any, if ill tobacco. To put the firſt queſtion, and refer the ſecond to a committee to conſider what time to be given for Virginia.

Sir Edward Cecil: — The queſtion now; whether one queſtion, or two.

Sir Francis Goodwyn: — Accordat. Fit to diſtinguiſh theſe queſtions, leſt the laſt croſs the firſt, which elſe will be clear.

Sir Joſ. Jephſon: — Accordat: The Virginia company never heard. Wine and drink hurt many; yet to baniſh it will kill here.

Mr. Smyth: — Hath his intereſt in Virginia and the Somer-iſlands. The company reſtraineth it by all means it can. To give it ſome time; elſe we overthrow the plantation. Somer-iſlands and Virginia holden of Eaſt-Greenwich.

Mr. Delbridge: — The conſequence of the Somer-iſlands exceeding great.

Mr. Raynſcroft: — Fit to draw a bill, and not to go to queſtion till then.

Mr. Alford: — That for foreign tobacco thought of and reported; this for all not: We read a bill thrice.

Upon queſtion: — Importation of all foreign tobacco thought fit to be barred; no one negative. —— From 1 vol. of Com. Journal, of thoſe dates.

REMARK. The bill to prevent the inordinate uſe of tobacco, which has been noticed, was ſoon after brought in, and paſſed. Ib. p. 586-605-27.

[18] Parl. Deb. 1620,1, 1 v. p. 296. — [19] Com. Journ. 1 v. 586-91. — [20] Stith, 199-201. — [21] Ib. 201-3. — [22] The order of council is in the Virg. Entries, Plant. Off. 1 v. p. 201. — [23] Stith, 203. — [24] Virg. Ent. 1 v. p. 203. — [25] Stith, 262,3. — [26] Virg. Ent. 1 v. throughout. — [27] See the ordinance, Stith's Append. N° 4.

[28] There is no circumſtance, in the hiſtory of colonial juriſprudence, better eſtabliſhed than the fact, " that the habeas-corpus act was not " extended to the plantations till the reign of Anne." The aſſembly of Maſſachuſets having paſſed a great variety of laws during the ſeſſion of 1692, many of which were very favourable to liberty, the miniſters of England peruſed them, at a ſubſequent day, with the greateſt attention, and diſallowed ſeveral of them: And, in December, 1695, they gave the governor and council the reaſons of their diſſent, at great length. The following extract from the letter, which was then tranſmitted by the committee of plantations, is ſubjoined, becauſe it is ſo extraordinary and deciſive. — From N. England Entries in Plant. Off. 4 v. p. 200.

" Whereas, by the act for ſecuring the liberty of the ſubject, and preventing illegal impriſonments, the writ of habeas-corpus is required to be granted, in like manner as is appointed by the ſtatute of 31 Car. II. in England; which privilege has not as yet been granted in any of his majeſty's plantations; it was not thought fit, in his majeſty's abſence, that the ſaid act ſhould be continued in force, and therefore the ſame hath been repealed. — Your loving friends,

J. Somers, C. S.	Pembroke, C. P. S.
Shrewſbury,	Romney,
Pembroke,	Godolphin,
J. Bridgewater,	Wm. Trumbul."

How

How aſtoniſhing, that ſome of the moſt renowned ſtateſmen, and lawyers, and whigs, in the Engliſh annals, ſhould have ſuppoſed, what the reaſonings in the extract before-mentioned affirm, that Engliſhmen are entitled to perſonal liberty from the grant of the king! They ſeem not to have reflected, that Engliſh coloniſts, being Engliſh ſubjects, derived their privileges from the ſame charter which placed the crown on the head of William. It is at the ſame time pleaſing to remark, that a prince, who has been miſrepreſented by the voice of faction as a deſpot, whoſe miſrule demanded reſiſtance, inſtructed the governor of a neighbouring colony, in the following memorable words.

" Security to perſonal liberty is a fundamental principle of juſtice in all " free governments, and the making due proviſion for that is an object " the legiſlature ought never to loſe ſight of; nor can they follow a bet- " ter example, than that which the common law of this kingdom hath ſet " in the proviſion made for a writ of habeas-corpus, which is the right " of every Britiſh ſubject."

Poſterity will do juſtice to ſentiments ſo worthy of a ſovereign of freemen, when the clamour of diſſatisfaction is no longer heard. Theſe two extracts will enable the wiſe to contraſt the reaſonings of Engliſh ſtateſmen, during the former and preſent times, on the ſubject of freedom.

The ancient coloniſts, being thus deſtitute of *perſonal ſecurity*, were in fact moſt grievouſly oppreſſed. Edward Randolph, the ſurveyor-general of the plantations during the reign of William, repreſented their lamentable condition to the Board of Trade, in March, 1700; and, among other beneficial regulations, he recommended; " That, it being the " practice for governors to impriſon the ſubjects without bail, the habeas- " corpus act ſhould be extended as fully to the colonies as it is in Eng- " land." — See his curious memorial in the Record, Plant. Off. titled, Plantations Gen. B. p. 404. — It was accordingly ſoon after conferred on Virginia by Anne: And how it was received by the two houſes of aſſembly will appear from their addreſſes to that princeſs, which are ſubjoined. — From Boyer's Polit. State of the four laſt Years of Q. Anne, 4 v. p. 446,7.

" We, your majeſty's moſt dutiful and loyal ſubjects, the council of " Virginia, beg leave in all humility to acknowledge your majeſty's late " favour to this country, in allowing us the benefit of the habeas-corpus " act, and in appointing courts of oyer and terminer, for the more " ſpeedy execution of juſtice, and relief from long impriſonments."

" We, your majeſty's moſt loyal and obedient ſubjects, the burgeſſes " now aſſembled, do in all humility beſeech your majeſty to accept our " ſincere and humble thanks for your many bountiful and gracious fa- " vours beſtowed on your ſubjects of this colony. We ſhall not pretend " to enumerate the particulars, nor can we without the higheſt ingrati- " tude omit mentioning theſe lately communicated to us by your ma- " jeſty's royal inſtructions to your governor, wherein you have aſſerted " to your ſubjects here their legal rights and properties — by allowing " them the habeas-corpus act."

[29] Purchas's Pilg. 4 v. p. 1787. — [30] Stith, 204,5. — [31] Virg. Ent. 1 v. p. 203,4. — [32] Stith, 207. — [33] Ib. p. 209. — [34] Purchas, 4 v. 1792. — [35] Virg. Ent. 1 v. p. 202. — [36] Stith, 232. — [37] Virg. Ent. 1 v. p. 203-5. — [38] Ib. 205-7. — [39] See the commiſſioners queſtions and Smith's anſwers, in his Voyages, p. 162-8. — [40] Rym. Fœd. 18 v. p. 618. — [41] Virg. Ent. 1 v. p. 195-9. — [42] Stith, 294. — [43] Virg. Ent. 1 v. p. 199.

[44] The Virginians of thoſe days could not diſcern the intentions of the royal commiſſioners, who viſited them in the year 1624; and their hiſtorians have been equally embarraſſed. The following order of the privy-council, of the 24th of October, 1623, ſhews what were the real objects of the inquiry which was then made. — From Virg. Ent. 1 v. p. 200.

His majeſty having taken into his royal care the plantation of Virginia, beſides the order he hath here given for the redreſs and reformation of the government, hath been pleaſed, for the better advancing of ſo great a work, to command that information be taken of the preſent ſtate of the plantations in divers conſiderable points: For which cauſe we have thought fit, and do hereby will and require you, John Harvey, &c. — in regard you are well acquainted with the courſes and conditions of things there, to make diligent inquiry of theſe things following, and certify us according to what you ſhall find; viz. — How many ſeveral plantations

plantations there be, and which of them be public and which private and particular: What people, men, women, and children, there be in each plantation: What fortifications, or what place is beſt to be fortified; what houſes, and how many; what cattle; what arms, ammunition, and ordnance, mounted and ſerviceable; what boats and barges; what bridges and public works; how the colony ſtandeth in reſpect of the ſavages; what hopes may be truly and really conceived of that plantation: And, laſtly, the directeſt means to attain thoſe hopes.

[45] Virg. Ent. 1 v. p. 108-10. — [46] Stith, p. 235. — [47] Ib. 304-18-22.

[48] The ſpirit, however, of that aſſembly was extremely different from the temper of a neighbouring houſe of delegates in modern times; which reſolved, in the following memorable words: — "That we, the burgeſſes of Maryland, have the *ſole* right, with the *conſent* of the *other* "*branches of the legiſlature*, of impoſing taxes on the good people of this "province." — It is remarkable, that the revenue-act, which was paſſed by the Virginian aſſembly during the adminiſtration of Lord Culpeper, was tranſmitted thither under the great ſeal by Charles II. And, it being afterwards enacted with amendments, theſe were diſſented to by that prince. — Virg. Ent. 2 v. p. 394-5. — According to the good ſenſe of the Engliſh conſtitution, the only bills, which commence with the king, are thoſe of pardon and grace; but, here is an inſtance, and they were common in that reign, of a money-bill being originally framed by the king and afterwards amended by him. —— The following extract of a letter from Virginia, dated the 22d of December, 1623, to the author of the Pilgrims, ſhews not only the deplorable ſtate of the colony, but thoſe grievances, which induced the aſſembly to paſs the law mentioned in the text.

"Nothing can be more grievous than the intolerable rate we pay here "for commodities; as 10l. ſterling for a hogſhead of meal, 16 ſhillings "for a gallon of Alicant, 3l. ſterling for a hen and eight chickens; and "ſo according to this rate for every thing elſe. Laſtly, the heavy taxes, "that are laid upon us freemen, for building of caſtles, paying of pub-"lic debts, for the not gathering of ſaſſafras, &c. So that it will come "to my ſhare, with that that is paid, and that that is to pay in corn

"and

" and tobacco, to at leaſt 20l. or 25l. ſterling this year. And, when I " have paid this, and paid my faithleſs ſervants their wages, I ſhall ſcarce " have good tobacco enough to buy myſelf for the next year a pint of " aqua vitæ." — From Purchas, 4 v. p. 1806.

[49] Stith, 318-22. — [50] Ib. 316. — [51] Ib. 312-13. — [52] Ib. 314-15. — [53] Ib. 326. — [54] Com. Journ. 1 v. 691. — [55] Stith, 327. — [56] Parl. Deb. 1620-1. every where. — [57] Com. Journ. 1 v. 720. — [58] Virg. Ent. 1 v. p. 210-77. — [59] Rym. Fœd. 18 v. 618. — [60] Ib. 621-68. Virg. Ent. 1 v. p. 278. — [61] Smith, ch. 21. — [62] Ib. ch. 23. — [63] Ib. p. 94.

CHAP.

CHAP. IV.

A colony is planted in Northern Virginia. — But abandons the country. — Its coaſt more fully explored. — And is called New-England. — A patent is granted to the Plymouth-company. — The diſcoveries and ſettlements of France. — The parliament diſputes the validity of that charter. — The Browniſts atchieve the firſt permanent ſettlement in New-England. — Their ſtory. — The council of Plymouth endeavours to plant that country. — Nova-Scotia granted. — Remarks. — Its revolutions. — Proceedings of parliament. — The council of Plymouth ſurrenders its patent. — The ſtory of the Browniſts concluded.

OF the tranſactions of that company in the Weſt of England, which undertook to plant Northern Virginia, little has hitherto been ſaid. The paucity indeed, and feebleneſs of its exertions, in executing the policy of the grant, or in promoting its own views, offer few materials for hiſtory.

The firſt veſſel, which was ſent out under the command of Chalons, in the year 1606, was attacked on the voyage and confiſcated by the Spaniards; who viewed the enterpriſes of other nations with jealouſy, who attempted to exclude them from the navigation of the American ſeas. Yet, though ſomewhat diſconcerted, the adventurers, animated by the vigour of Popham, the chief-juſtice of England, detached, in the ſubſequent year, two ſhips under the command of Gilbert, carrying with them emigrants to form a colony. And they took poſſeſſion of a part of Northern Virginia, near the confluence of the river Sagadahock, in the autumn of 1607, where they built Fort Saint George. The calamities, which they ſuffered during the ſubſequent winter, demonſtrate what men are capable of undertaking when actuated by expectation of gain, and what they can endure and perform when left to their own exertions. But, when they heard of the deceaſe of the chief-juſtice, their patron, by the veſſels which brought them ſupplies; when they looked at the numerous graves of the dead, among whom was Gilbert, their chief,

chief, they reſolved to deſert a country, which as yet they had diſcovered to be only fruitful in evils.[1]

The abandonment of the colony, and the frightful pictures which were exhibited of that coaſt, ſo diſcouraged the adventurers and the people of England, that ſimilar projects were not for ſome time thought of as practicable. Yet a trade with the aborigines for furs, and a fiſhery, were continued. And, in order to proſecute theſe gainful enterpriſes, Smith, who is ſo famous in Virginian ſtory, was fitted out by the Plymouth-company in the year 1614. But his adventurous ſpirit prompted him to purſue diſcovery rather than to execute the real objects of his voyage. He explored, with ſome degree of accuracy, that part of the coaſt which ſtretches from Penobſcot to Cape Cod. He formed his diſcoveries into a chart, which he preſented to Charles, prince of Wales. And that country, which had been equally called Norumbega, Virginia, Canada, New-France, and Acadie, was then denominated by him New-England.[2] The French exclaimed, at a future day, with their accuſtomed vanity, that they had for years diſcovered and planted New-France before New-England had a name: And the fact was aſſuredly as they aſſerted,[3] though colonial hiſtorians and Engliſh ſtateſmen ſeem to have uniformly denied it. That prince lived to experience the ingratitude of a peculiar people, who were to inhabit that territory which he had thus honoured with the appellation of his principal kingdom, and who derived, from the favour of his grant, ſpecial immunities.

The Weſtern adventurers nevertheleſs continued to ſend out veſſels to that country, partly in order to make farther reſearches, but more to carry on a commerce which experience had diſcovered to be extremely gainful. Yet all their deſigns were either diſconcerted or oppoſed. The French and Dutch, whom they could not exclude, at the ſame time engaged with ardour in ſimilar enterpriſes. The Virginian company too, with the ſame views, carried on the ſame projects; which they effectually executed, notwithſtanding every obſtruction that the commercial jealouſy of rivals could ſuggeſt. And individuals, claiming equal privileges, performed more ſucceſsful voyages than either, becauſe ſuperior œconomy directed their operations. Envying the greatneſs and fame of the South-

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ern company, and feeling ſenſibly all the inconveniences which they could not prevent or remove, the adventurers determined, in the year 1618, to ſtrengthen themſelves by the obtention of a new patent. But they were vigorouſly oppoſed by their competitors; the intereſts and clamour of the nation ſtood as mighty obſtacles in their way; and it was not till after two years of painful ſolicitation that they procured the object of their wiſhes.[4]

Being informed that a conſiderable country in America had been lately diſpeopled by a plague, and that no part thereof was then inhabited by the ſubjects of any Chriſtian prince; being deſirous to advance the Chriſtian religion, and to ſtretch out the boundaries of his dominions; James I. on the 3d of November, 1620, granted that territory, which lies between the fortieth and forty-eighth degrees of Northern latitude, to the duke of Lenox, the Marquis of Buckingham, the Marquis of Hamilton, and their aſſociates, in abſolute property. The grantees were incorporated by a charter, which was afterwards diſtinguiſhed as "the grand Plymouth patent," by the name of "the "council, eſtabliſhed at Plymouth, for planting and governing that "country called New-England." The ſame authority and privileges were now conferred on them which we have ſeen given to the treaſurer and company of Virginia: And they were equally empowered to exclude all from trading within the boundaries of their juriſdiction, and from fiſhing in the neighbouring ſeas.[5] Thus was New-England ſubjected to the government and laws of a corporation within the realm: And thus the inhabitants of that colony were to be ruled not with their own conſent, but by the regulations of a commercial aſſociation: Yet, it is a ſingular circumſtance in the hiſtory of this famous grant, that the validity of it was ſtrongly denied by the French nation and by the parliament of England.

When Francis I. of France beheld the glory and advantage which his contemporaries and rivals derived from American diſcovery and conqueſt, he gave every encouragement to his ſubjects to engage in ſimilar enterpriſes. So early as the year 1540, he granted letters patent to Jacques Quartier for the eſtabliſhment of a colony in Canada.[6] A fort was

accordingly built by that adventurer in the year 1545, with design rather to explore the great river St. Laurence than to take formal poſſeſſion of the country. The civil contentions which enſued in that kingdom extremely retarded the progreſs of coloniſation. Yet, at a time, when there exiſted no Engliſh ſubjects in America, the firſt permanent ſettlement was made in Canada during the year 1604. The foundation of the city of Quebec was laid in the year 1608:[7] And this circumſtance gave the French a fine opportunity of gratifying their own vanity without mortifying that of others, by boaſting, "that the capital of New-"France was built upwards of twenty years before the town of Boſton "exiſted." Emulous of the merits of Francis I. no ſooner had the virtues and talents of Henry IV. calmed the civil troubles of his kingdom, than he followed his example with regard to ſuch enterpriſes. In November, 1603, he appointed De Mont lieutenant-general of that American territory lying between the fortieth and forty-ſixth degrees of Northern latitude, and which was now called Acadie,[8] empowering him to coloniſe and to rule it: And he ſoon after granted to that gentleman and his aſſociates an excluſive right to the commerce of peltry in Acadie and the gulf of St. Laurence.[9] A ſettlement was accordingly formed on that coaſt, near the river St. Croix, in the ſubſequent year. And in 1605 Port-Royal was built;[10] which, during the reign of Anne, was denominated Annapolis by its conqueror. Of Acadie the French retained quiet poſſeſſion, though the colony continued feeble and unproſperous, till the year 1614, when Argal attacked them by command of Dale, the governor of Virginia;[11] becauſe they were deemed invaders of that ancient dominion. That conduct, ſo contrary to the law of nations, becauſe inconſiſtent with their peace, has been celebrated by hiſtorians, though it was equally inconſiſtent with the Virginian charters and inſtructions, though during later times it would have occaſioned an immediate rupture, with all its attendant ills. Notwithſtanding this irruption, ſo unwarrantable and irregular, the French continued their occupancy. And their miniſters, with their uſual haughtineſs, derided, at a future period, the grand Plymouth-patent, becauſe it gave away the ſame region, in 1620, which had been granted by Henry IV. ſeventeen years before; and, with great

great plauſibility, they declared it invalid, becauſe it expreſſly ſtipulated that it ſhould not extend to territories which were then in poſſeſſion of any Chriſtian ſtate.[12] From theſe ſignal facts, and the juſt inferences of the law of nations from them, colonial writers have faſtidiouſly turned their faces, and Engliſh ſtateſmen have followed their example. The follies of both have coſt England one hundred millions of good ſterling pounds. The time is now arrived when truth ſhould be divulged: It is to be lamented, that it may be revealed when former errors or concealments are deplored in vain, when experience may add to the ſtock of political knowledge to little purpoſe.

Nothing engaged more the attention of the parliament, which aſſembled in January, 1621, than the numerous patents of monopoly which had been obtained from the imprudence or facility of James, and which, we are aſſured, ſprang up like hydras: And none was deemed more miſchievous or illegal than that which we have ſeen ſo lately granted to the Plymouth-company; which, with a monſtrous improvidence, excluded Engliſh ſubjects from that freedom of fiſhing on the American coaſts which the people of other nations then freely enjoyed. But a charter of the king, ſo contrary to law, and ſo inconſiſtent with national intereſts, did not fail to attract the animadverſion of the great inqueſt of the ſtate. And, the patent being inſpected by the committee of grievances, the houſe reſolved that it was void; giving, as a reaſon, what ſhews the ſenſe of the kingdom, and at the ſame time inflicted a deep wound on the proſperity of the company, "that the clauſe of forfeiture was "by grant, and not by act of parliament."[13] Thus the nation and the colonies received equal protection and relief from the deciſive conduct of an Engliſh houſe of commons, at a time when its juriſdiction was not perfectly known or defined, when it did not feel the full extent of its own authority.

To place a right however of ſo great importance upon the firmeſt foundation, a meaſure more effectual and permanent was ſoon adopted by the commons. A bill was brought in "for a freer liberty of fiſhing "on the ſea-coaſts of Virginia, New-England, and other parts of Ame-"rica:" Yet it did not paſs without oppoſition, becauſe it had to en-

counter not only the prejudices that naturally riſe up againſt every novelty, but the weight of the influence of the court, in a caſe wherein the regal power was ſuppoſed to be involved. Sir George Calvert, the ſecretary of ſtate, conſidering it as an invaſion of the royal prerogative, inſiſted: "That thoſe foreign countries are not yet annexed to the crown "of England, but are the king's, as gotten by conqueſt; and, there- "fore, in ſuch new plantations the king may govern as his majeſty ſhall "think fit; that the fiſhermen, for whoſe advantage this bill only pro- "videth, are the true cauſe of the diſorder in thoſe parts, by deſtroying "the woods, and caſting ballaſt into the havens:" And he recommend- ed to the conſideration of the houſe, "whether we ſhall here make laws "for the government of thoſe parts." But to doctrines, which were ſo faſhionable at the court of James I. and which, by a ſtrange revolution in the ſentiments of men, have been adopted, in a great meaſure, by thoſe who oppoſe the prerogative in all things, it was properly anſwered, and it was the ſenſe of the houſe and of the nation: "That the king's "prerogative is not impeached by the preſent meaſure; becauſe, what is "here agreed on, is done by the king himſelf, who hath a negative, and "may refuſe whether any ſuch bill ſhall paſs; that thoſe countries, be- "ing holden of the manor of Eaſt-Greenwich, are annexed to the "crown by the ſame charter, by which that manor itſelf is poſſeſſed; "and we may therefore make laws here for Virginia and New-England, "becauſe, if the king and lords aſſent to the act, it will controul the "patent." The bill, after various debates, was regularly paſſed. But, owing to the reaſons ſuggeſted by the ſecretary of ſtate, this ſalutary re- gulation, like much of the intereſting buſineſs of that ſeſſion, did not become the law of the realm.[14] Nevertheleſs, we ſhall find, in the ſe- quel, the ſame propoſal inſiſted on by the commons, till, by their perſe- vering ſpirit in aſſerting their own and the nations rights, they obtained, for all, the free liberty of fiſhing on the coaſts of America.

It had long been a cuſtom, in many pariſhes on the coaſt of England, for the clergy to receive tithes of the fiſh caught by their pariſhioners in the neighbouring ſeas; and, being generally paid in kind, they were cal- led *Chriſt's dole*. But, when fiſhing voyages were firſt made to the Ame-

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rican ſhores, the diſſimilarity of circumſtances was not immediately attended to. The parſons naturally demanded what they conſidered as their accuſtomed dues: And, for many years, had they received tithes on ſuch adventures without oppoſition or complaint. No ſooner, however, had thoſe fiſheries become objects of national importance than thoſe exactions were deemed a great and general inconvenience. To redreſs this evil, therefore, was brought in, during the preſent ſeſſion, "an act "to ſuppreſs the exaction of tithes on fiſhing voyages to Newfoundland "and other places beyond the ſea." After various debates and amendments, occaſioned partly by a juſt regard to the intereſts of the clergy, but more by a zeal for the public good, it was at length paſſed by the commons.[15] Yet it met the fate of other excellent bills of that ſeſſion, and received not the approbation of the other branches of the legiſlature. The parliament, having thus exerted as much authority over the feeble colonies and given them as much protection as the peculiar maxims of that reign allowed, ſoon after roſe diſappointed and diſguſted: And, as they did not meet again for ſome years, we ſhall not ſoon have an opportunity of reviewing their conduct with regard to colonial affairs.

Meanwhile an obſcure ſect, which had acquired the appellation of *Browniſts*, from the name of its founder, obtained the honour of planting the firſt permanent colony in New-England. So early as the year 1602 they had formed a ſeparate ſociety at Yarmouth, and began to propagate their peculiar tenets; but, attracting immediately the notice of the vigilant adminiſtration of Elizabeth, the perſecution that enſued obliged them to remove, though with the greateſt difficulty and danger, to Leyden. Yet, after twelve years unmoleſted reſidence in Holland, they became unhappy in their ſituation, becauſe they foreſaw the deſtruction of their ſociety in the toleration they enjoyed; and determined to ſeek new adventures in America. With this deſign they ſent agents to treat with the Virginian company for a grant of land within its juriſdiction. They offered to tranſport themſelves at their own expence, would the company procure them the royal licence, under the great ſeal, for the free enjoyment of their own notions in religion. But James, having already eſtabliſhed the church of England in Virginia, refuſed to grant

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their deſire; though he aſſured them, that while they lived peaceably he would not diſturb their repoſe. They were ſomewhat diſconcerted; Yet, continuing unhappy in a country where they were obſcure and unperſecuted, they at length reſolved to truſt to his verbal declarations. They procured a conſiderable tract of land from that corporation, which then gave every aid towards the ſettlement of Virginia. They entered into a commercial aſſociation with ſeveral merchants of London, in order to proſecute a common trade for mutual advantage: And having now procured two veſſels, by the aid of theſe men, of greater wealth and importance, they ſailed from England in Auguſt, 1620, and arrived on the American coaſt in the ſubſequent November. They immediately diſcovered that they had been carried to the northward of their deſtination, and beyond the juriſdiction of Virginia. But the ſeaſon of the year, as well as the weakneſs of their condition, prevented their removal ſouthward in ſearch of the great object of their fatigues and dangers.[16] And here they determined to put an end to a voyage long and diſaſtrous, which would have diſcouraged any other than men animated with peculiar motives of ambition, religion, or intereſt.

The more ſagacious beheld, with concern, "that ſome rather inclining to faction were not well affected to unity," and they foreſaw that religion alone, without the authority of government, would not be ſufficient to preſerve peace, or even the appearance of ſociety: They propoſed therefore *a covenant*, which was ſigned before they landed, on the 11th of November, 1620, by the heads of families and freemen. It recited: That they had undertaken to plant a colony for the glory of God, and for the honour of their king and country: And, profeſſing their loyalty to their ſovereign lord king James, they combined themſelves into a body politic, for the making of equal laws for the general good.'[17] Near Cape Cod, on the coaſt of New England, about one hundred and twenty perſons landed, within the juriſdiction of the council of Plymouth: And from this circumſtance probably they called the place of their ſettlement New-Plymouth.

The members of this little ſociety being Engliſhmen, prior to their emigration, were therefore the ſubjects of the Engliſh monarch, in right of

of the crown of England, or of his corporate capacity, and not of his perſon. Their removal acroſs the Atlantic, from one part of the dominions of the ſtate to another, did not alter the nature of their allegiance or of their former connexion. For, allegiance they owed as a debt from the moment of their birth, which neither their own act could change, nor the grant of the prince could abrogate: And, having derived advantages from the country of which they had been members, they could not ceaſe to be citizens without its conſent. Settling in a deſert territory of the empire, without a charter, the juriſprudence of England, as far as it was applicable to their condition, became the law of the colony; becauſe, they had carried it with them as their birthright. To their voluntary aſſociation, as far as it was conſiſtent with their allegiance and with the conſtitution of the ſtate, no rational objection can be made. But it is contrary to all principles to argue, that they could, by the tranſaction before-mentioned, acquire peculiar immunities or excluſive juriſdiction. And, as they had freely placed themſelves within the boundaries of the Plymouth company's patent, they neceſſarily conſented to obey its ordinances; though that body ſeems never to have exerciſed any authority over them. Could they have done any one act of themſelves contrary to the laws of the realm, very different maxims muſt be preſumed to have prevailed: It muſt have been ſuppoſed, that they no longer continued ſubjects, who owed obedience, but became aliens by their emigration, who owed none; that now, denying ſubmiſſion to the rules preſcribed by the ſupreme legiſlature, they had acquired co-ordinate and ſovereign authority. Yet the aſſociation itſelf oppoſes the admiſſion of reaſonings viſionary and independent, and recogniſes England as their country; themſelves as ſubjects; and the king as their ſovereign lord.

Having thus formed a community, by a compact which every one was bound to obey, becauſe all had conſented, the emigrants choſe Carver their governor for one year: And the practice of an annual choice continued unchanged during the exiſtence of their government. In order to enable that magiſtrate to diſcharge a truſt the moſt important, becauſe he was the common guardian of common rights, they appointed one aſſiſtant; but in the year 1624 they added four more, and they afterwards

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enlarged that number to ſeven. During the infancy of the colony the legiſlature conſiſted of "the whole body of the male inhabitants;" who, in the true ſpirit of Rouſſeau, frequently aſſembled to determine affairs both legiſlative and executive: And it was not till the year 1639 that they departed from the ſyſtem of that theoriſt, and, by eſtabliſhing a houſe of repreſentatives, compoſed of deputies from the ſeveral towns, enſlaved themſelves. With a good ſenſe, which ſhews that fanaticiſm had not yet depraved their underſtandings, they reſolved to make the laws of England the rule of their government, till they agreed upon regulations more ſuitable to their peculiar circumſtances: "And to theſe laws, ſays their "moſt ancient hiſtorian,[18] they were willing to be ſubject unto though "in a foreign land; adding ſome municipal laws of their own, in ſuch "caſes, where the common and ſtatute laws of England could not well "reach, and afford them help in emergent caſes." Yet, when they did eſſay their legiſlative talents, like the other independents, they did not exactly proportion the penalty of crimes to their nature or enormity: While fornication was puniſhed by whipping, and adultery with death, on forgery was inflicted only a moderate fine. And theſe puniſhments gave riſe probably among that *godly and ſober people* to the too common perpetration of a crime, which the laws of England, with peculiar modeſty, aſſures us is not fit to be named: The ſame offence appears to have frequently occurred, from ſimilar cauſes, in all the colonies of New-England.[19] Of the ſufficiency of a juriſdiction, which had been thus founded on the ſtable baſis of conſent, with regard to the infliction of corporal puniſhments, the emigrants entertained little doubt: But, a homicide being committed ten years after, they very properly conceived the greateſt ſcruples concerning their authority to puniſh that crime with death. They conſulted their neighbours, who had by that time ſettled around Maſſachuſets-Bay. And that ſingular people, with a temerity peculiar to them, adopted the rule of Moſes, and adviſed, "that the ſlayer ought "to die, that the land might be purged from blood." The criminal was tried by a jury, found guilty, and executed.[20] What an admirable ſubject for diſputation does this fact offer to theoriſts, who are ſo fond of inquiring into the validity of the reaſons on which eſtabliſhments are found-

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ed! What can juſtify the putting that man to death, if he even formally conſented to a penalty, which diveſted him of what was not in his own power; and, conſequently, not ſubject to his ſpecial agreement?

The Browniſts of New-Plymouth are ſuppoſed to have been the firſt of the Independents. Though they relaxed ſomewhat from the rigour of the original principles of their ſect, and diſdained its name, they could not conform to the notions of the Puritans, and deemed their own a diſtinct and co-ordinate church. During thirteen years the whole colony formed only one religious ſociety; and, having no miniſter during that time, their elder generally prayed and propheſied to them.[21] But their tenets were moderate, and their practice was generally tolerating.

From the incommodiouſneſs of the voyage, the inclemency of the weather, the want of every accommodation, the emigrants contracted diſeaſes, which ſoon carried off fifty of their number. But they encountered every danger, and ſuffered every inconvenience, with a patient ſpirit, becauſe they enjoyed their own peculiarities, and governed themſelves. Their aſſociates in England ſent them a ſupply of neceſſaries, and a reinforcement of coloniſts, in the ſubſequent year; and, while they derived conſiderable advantages from the numerous veſſels which frequented their coaſts for the purpoſes of fiſhing and commerce, their property was frequently deſtroyed, and their navigation injured, by the improvidence of Engliſh ſailors. At the ſame time that theſe coloniſts very prudently preferred the bleſſings of peace, they were not afraid of the diſaſters of war. They eaſily repelled an unprovoked attack of the neighbouring Indians with a becoming bravery. They ſoon after made a peace with that people, which does equal honour to their juſtice and good ſenſe:[22] And they long enjoyed all the bleſſings of a government conducted at once with prudence and vigour.

Yet, of all the colonies, none ſeems to have increaſed ſo ſlowly in population and in power as New-Plymouth. Its ſoil was the moſt barren of any; its religion was ſomewhat unſocial: Its views, being originally turned rather to the eſtabliſhment of a factory for trade than to the planting of a deſert, favoured the ſpirit of monopoly, which is generally unpropitious to every laudable exertion. That pernicious policy, which

James had eſtabliſhed in Virginia by his inſtructions, theſe emigrants imprudently adopted for themſelves. During ſeveral years, all commerce was carried on, agreeably to the original contract, in one joint ſtock: All things were common to all; and, from the public ſtore, daily neceſſaries were diſtributed to every one. But, in all countries and ſituations, the ſame cauſes will produce their correſpondent effects: And, what the Virginians had ſadly experienced, theſe coloniſts now found abundant reaſon to deplore. For they were ſometimes *in danger of ſtarving*; and *ſevere whipping*, which was often adminiſtered to promote labour, had no other effect than to create *conſtant diſcontent*. But the vanity of this abſurd policy, even among *godly and ſober men*, though it has been honoured by the recommendation of enlightened theoriſts at all times, ſoon became univerſally apparent: And the introduction of property and other excluſive rights, by engaging the affections and invigorating the purſuits of men, immediately produced the happieſt change. Yet, owing to the cauſes before-mentioned, New-Plymouth continued for years poor and unproſperous, and remained long in a ſtate of independent inſignificance.[23]

While thoſe emigrants thus took poſſeſſion of its territory without its knowledge or aſſent, the council of Plymouth adopted two meaſures for effecting the policy of the patent: It requeſted a contribution of the patentees; it offered the freedom of the company to individuals: But neither proved ſucceſsful. Men do not freely give money to procure advantages diſtant and problematical: And it was conſtrained to grant various portions of New-England to private adventurers, who ſoon after planted ſeveral diſtinct but feeble ſettlements in that country. The imprudence of this laſt meaſure bequeathed to the poſterity of the coloniſts innumerable diſputes, either with regard to the boundaries of territory, or the extent of juriſdiction; which were regretted, in after-times, in proportion as they were found vexatious and expenſive.[24] Nor was the company more ſucceſsful in its attempts to prevent the people of England from approaching the ſhores of its dominions. The merchants, being invigorated by the reſolves of the commons before-mentioned, carried on the fiſhery and commerce for peltry to conſiderable advantage

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and extent. And it applied to James for relief. Being informed that interlopers had not only attacked the planters in their poſſeſſions, and taken their timber without ſatisfaction, but had caſt ballaſt into the harbours, and ſold warlike ſtores to the natives; that monarch, with an impolicy and inattention to the reſolutions of parliament, which appear very ſtriking in the preſent times, iſſued a proclamation,[15] in November, 1622: It commanded; that none ſhould frequent the coaſts of New-England but the adventurers and planters, or traffic with Indians otherwiſe than by the licence of the council of Plymouth, or according to the orders of the privy-council. But, though various oppreſſions were committed under the authority of this remarkable edict, yet we ſhall find that, far from proving beneficial to the company, it really brought on its diſſolution: So common is it for an apparent good to produce a real evil.

A meaſure of ſtill greater importance was, about the ſame time, adopted by the company, in order to promote its general intentions; but was attended with the ſame ſucceſs. When Sir Ferdinando Gorges, who was chiefly intruſted with the direction of affairs, reflected on the prodigious extent of the region to be planted, on the little progreſs of coloniſation hitherto, he conceived the deſign of perſuading the Scottiſh nation to form a ſettlement within the limits of New-England: And he eaſily procured the conſent of the company, and the approbation of Sir William Alexander of Menſtry, a perſon of conſiderable influence during that reign; who inſtantly entered into all his views, becauſe they promoted his intereſt.[16] Being deſirous, on all occaſions, to procure the glory and utility of his kingdom of Scotland, James I. in September, 1621, granted, under the great ſeal of that realm, to the laſt-mentioned gentleman, who afterwards acquired the title of Stirling, the country bounded on the North, and Eaſt, and South, by the river St. Laurence and the ocean, on the Weſt by the river St. Croix. It was called Nova-Scotia, and erected into a palatinate, to be holden as a fief of the crown of Scotland; and the proprietary was inveſted with the accuſtomed regal powers belonging to a count-palatine.[17] Yet it would probably have embarraſſed the wiſeſt civilian of that kingdom to diſcover by what right the

king of Scotland conveyed that extenſive dominion. The law of nations communicated no title to thoſe who did not diſcover and occupy: And the recitals, neither of records nor of hiſtory, evince, that the ſovereigns of that realm ever employed navigators, in order to explore and poſſeſs. Henry IV. of France had granted the ſame tract in 1603; which was inſtantly occupied by his ſubjects: And James I. of England had conferred the ſame lands, in 1620, on the Plymouth company. When the charter of the Scottiſh king was produced, in after-times, to prove the right of the crown of England to Nova-Scotia, it was derided with more than uſual triumph by the miniſters of France: They inſiſted, and juſtly, that the king of Scotland could not grant, in 1621, what had been already given away by the predeceſſor of their ſovereign; that it could not extend to a country which had been ſo long poſſeſſed by the people of their nation, becauſe it expreſſly ſtipulated that it ſhould regard only thoſe lands which were uncultivated and inhabited by ſavages.[18] The various circumſtances of that memorable tranſaction prove how little the wiſeſt ſtateſmen of thoſe days underſtood the colonial rights, either of individuals or of nations, becauſe they had not been then formally conſidered or debated: And the ſad hiſtory of Darien demonſtrates how ſuch a charter would have been received in England during the reign of William.

The viciſſitudes of few ſtates afford better leſſons of inſtruction to kings, and ſtateſmen, and nations, than do the revolutions of an inconſiderable territory, for the name of which mighty kingdoms have formerly contended. Some of its changes have been already mentioned. Alexander ſent out a colony, in the year 1622, which looked at the coaſt of Nova-Scotia, and returned. Yet the ingenious writings of that gentleman promoted the intereſts of coloniſation, by inflaming the ſpirit of emigration.[19] In June, 1625, he obtained, from Charles I. a confirmation of his title, under the great ſeal of Scotland, in the ſame words as the former grant. But, finding that neither conſiderable profit nor honour were ſoon or eaſily to be acquired from ſuch adventures, he ſold almoſt the whole of his intereſt, in Nova-Scotia, to Saint Etienne, a French hugonot, in the year 1630, upon this condition, that the inhabi-

tants

tants of it ſhould continue ſubjects of the Scottiſh crown. The French nevertheleſs retained poſſeſſion. And, when the follies of Buckingham engaged the rival nations in warfare, a commiſſion was given, by Charles I. to Kirk and his valiant kinſmen, to conquer the American dominions of France. He attacked Canada in July, 1628: He obliged Quebec to capitulate in July, 1629.[30] And thus was the capital of New-France ſubdued by the arms of England juſt one hundred and thirty years before its final conqueſt conferred immortality on Wolfe. This ſignal event was unknown in Europe when peace was re-eſtabliſhed in April, 1629. And Charles I. therefore, by the treaty[31] of St. Germain, concluded in March, 1632, abſolutely reſtored, to France, Acadie, New-France, and Canada, generally and without limits; and particularly Fort-Royal, Quebec, and Cape Breton. The French gloried at a future day, not that they had recovered without conſideration what the bravery of Engliſhmen had won, but that, in theſe tranſactions, the name of Nova-Scotia did not appear. Colonial hiſtorians, with an inattention or intereſtedneſs of which there are few examples, have always inſiſted, that, notwithſtanding the abſolute reſtitution before-mentioned, certain rights, with regard to that territory, ſtill remained in England: And her ſtateſmen, with a credulity and want of wiſdom equally unexampled, have implicitly adopted their ſentiments. But, in what conſiſts the juſtice or policy of preſerving latent pretenſions, which cannot be defended by candid diſcuſſion? The law of nations reprobates whatſoever contributes to diſturb their repoſe. And the preſent generation has abundant cauſe to deplore that ſyſtem of miſtaken politics, which entailed on this realm contentions and debts, that poſterity may poſſibly regret in vain.

Meanwhile the parliament, which aſſembled in March, 1624, beheld the conduct of the company above-mentioned, and the edict of James, with equal jealouſy and indignation. The committee of grievances attacked the validity of the patent. Gorges was heard by his counſel in its defence. But, as he could not juſtify the clauſe of forfeiture, the patentees agreed, that the Engliſh fiſhermen may viſit the coaſts of New-England without interruption. The commons however were too zealous

to

to rely on the precarious ſecurity of a promiſe which ſeemed to imply ſome kind of right. They, with one voice, reſolved, that the clauſe of confiſcation, being only by patent, and not by act of parliament, was void and againſt law; that the people of England ſhall enjoy the fiſhery there with every thing neceſſary. And the ſame act, for a freer liberty of fiſhing on the coaſts of New-England and other parts of America, which had been paſſed in 1621, was brought in; and, after ſome debate, was once more tranſmitted to the lords. It is remarkable that the power of parliament, to make laws for that country, was now no longer diſputed even by the ſecretary of ſtate. For he, at preſent, only inſiſted, that the free fiſhery granted by this bill, giving authority to cut down wood within a quarter of a mile of a dwelling-houſe, was ſo extremely prejudicial to the planters, that it will overthrow all the plantations." Yet, the influence of prerogative ſtill exiſting, it met with its former fate, and became not a law. Thus did the commons defend their own and the nation's rights: Thus did they aſſert their power of giving away the property of the inhabitants of New-England without their explicit aſſent. For no part of ownerſhip is generally held more ſacred and intereſting to mankind than that which is annexed to the freehold. What an excellent train of reflection do the colonial tranſactions of parliament, during the reign of James, offer to the diſcerning: We have ſeen the colonies applying to the commons for protection againſt the arbitrary adminiſtration of the king; the houſe taking cognizance of their affairs, and aſſerting, by reſolution and by bill, as well their rights and thoſe of the ſtate as its own juſt authority. And what a fine contraſt do they form to the conduct and reaſonings of all parties in later times.

A few ſhort notices, though they muſt neceſſarily reach beyond the limits of the preſent reign, will ſhew, with ſufficient exactneſs, in what manner an end was put to the exiſtence of the company, and to the independence of New-Plymouth. And this attention is equally due to both; becauſe, but for their perſevering exertions, New-England had probably never been peopled.

The reſources of the council of Plymouth being thus cut off by the vigorous reſolutions of the commons, it ſeems to have no longer thought it practicable

practicable to ſettle a plantation, though it appointed a governor-general for New-England. As the great purpoſe for which the charter had been procured no more exiſted, the patentees prudently reſolved to divide the country among themſelves. And, in the preſence of James, they caſt lots for the ſhares which each was to enjoy as his own in ſeveralty: Propoſing to obtain the royal confirmation, for the particular portions, by ſpecial names, which fortune had given to every one. Nevertheleſs, they continued for a few years longer to act as a body politic. And, during that period, they granted various parts of the coaſt to different ſocieties; which, we ſhall find, performed ſucceſsfully what the council of Plymouth had been unable to effect. In the beginning of the year 1635, the patentees agreed to ſurrender their charter to the king; in order that the powers of government might in future be exerted by Charles I. who already directed the adminiſtration of the ſovereign ſtate with a judgement immature and deſultory. They executed deeds of feofment, for the various ſhares before-mentioned, under the ſeal of the corporation: They petitioned that monarch for patents of confirmation; which ſeem, however, to have never been granted, except of the province of Main to Gorges. And, in June, 1635, the act of ſurrender, as well of the charter, as of every right and demand of the company, paſſed under the common ſeal; which was immediately accepted by that prince.[33] Thus was diſſolved by voluntary conſent, ariſing from mere debility, the council of Plymouth, ſo famous in the ſtory of New-England, after the expenditure of conſiderable ſums of money, without the acquiſition of profit or glory.

What a fatality ſeems to have attended the conduct and exiſtence of all the great companies, eſtabliſhed for coloniſing America, which have appeared in the foregoing period! It muſt have been owing to ſome radical defect, that every one was equally unſucceſsful. Whatever were their purſuits, diſappointment uniformly attended their ſteps. If they ſearched for mines of the precious metals, their inquiries proved fruitleſs, becauſe they were directed to unattainable ends. If commerce was the object, barren was the field, and unprofitable, where they had only to traffic with ſavages, indolent and poor, who diſdained labour and trade, as degrading

grading to warriors and unworthy of men. If coloniſation and government were their chief ambition, their ultimate failure might have been foreſeen; becauſe the former demanded an enormous expence without hope of retribution; becauſe the latter required a genius, diſſimilar to what generally actuates ſuch combinations; the narrow regulations of commercial bodies are little conſiſtent with that freedom of action, which men ſhould enjoy, who adventure their lives in dangerous enterpriſes; the intrigues and diſſentions, incident to numerous aſſociations, are little ſuited to the ſpirit or progreſs of enlarged legiſlation. To theſe cauſes may be added the want of œconomy and attention, the never-failing attendants of every extenſive undertaking, which is not directed by individuals deeply intereſted in its ſucceſs. Hiſtory had demonſtrated, that the colonies of antiquity, which had been planted and governed by ſtates commercial and republican, by the Greeks, the Carthaginians, the Romans, had ſtruggled with every difficulty that tends to enervate exertion and depreſs the nobleſt purſuits of men: And they had groaned under the accumulated miſeries of miſrule, of poverty, and of that want of energy which generally ariſes from both, but is always more fatal than either. The reign of James I. was an age of great ſpeculative learning, yet of little practical wiſdom. And, in oppoſition to the experience which reading afforded, the peopling of America was intruſted to the great corporate bodies, the ſtory of which has been told. The plantations, therefore, languiſhed in immaturity, grew up ſtinted and unpromiſing, and ſeemed to wither away without hope of ultimate completion. The annihilation of the great companies before-mentioned infuſed, however, a principle of new life. And reſtraint was no ſooner removed, and men were left free to manage their own affairs in the way moſt agreeable to themſelves, than the coloniſts engaged in every laudable purſuit, and acquired an extent of population, of commerce, of wealth, and of power, unexampled in the annals of the world.

Amid all its diſaſters, none gave more real concern to the colony of New-Plymouth than the want of a title to the country which it poſſeſſed. It had built a town, erected a citadel for its defence, and laid out farms for its ſupport; yet it had no other claim than what mere occupancy confers,

confers, in oppoſition to municipal rights. During ten years it had ſolicited a grant without ſucceſs, owing chiefly to the infidelity of its agents. The council of Plymouth, at length, in January, 1630, conveyed, as well a conſiderable territory around the original ſettlement, as a tract of land on the banks of the river Kenebeck. It conferred not only various privileges, but power to make ordinances for the government of coloniſts, *godly and ſober*; on this condition, that they ſhould not be contrary to the laws of England. Yet this patent was not confirmed by the crown, though the contrary has been affirmed by colonial hiſtorians. And now the emigrants, who were increaſed by this time to three hundred, could wiſh for no better title to their lands, becauſe their poſſeſſion was clothed with the legal right. But they ſtill doubted the validity of their authority with regard to government. For, however comprehenſive were the expreſſions of their charter, the powers of juriſdiction could not be communicated by the council of Plymouth; becauſe they had been beſtowed on it and its ſucceſſors, for ſpecial purpoſes, and it could not grant away, by parcels, a truſt ſo important, without the conſent of the king who conferred it. Nevertheleſs this defect was not probably altogether unfavourable to the real intereſts of the ſettlers, or their happineſs: Their adminiſtration was actuated generally by principles of greater moderation and good ſenſe, than ſome of their neighbours; and it was more conciliatory, and leſs oppreſſive. It was not till about this period that they had any perſon choſen and appropriated to the office of paſtor: And, having now eſtabliſhed a church, they profeſſed the ſame faith with that of the reformed ſocieties in Europe, except only in the article of government, which they endeavoured farther to improve. It ought to be recorded, to their honour, that however rigid they may have been when they ſeparated from the church of England, they ſeldom diſcovered that ſpirit of perſecution which ſo degraded Maſſachuſets at a ſubſequent period.[14]

Thus New-Plymouth continued unimportant and unknown till the year 1643; when it emerged into notice, by entering into that confederation which united into one commonwealth the four colonies of New-England. As it now derived every advantage from mutual aid and pro-

tection, it began to ſend out coloniſts to form other ſettlements among the natives; and it continued to act, till the Reſtoration, as it had always done, as an independent, though feeble, community.[35]

The general court congratulated Charles II. upon his acceſſion, in expreſſions of loyalty which ſeem to evince that they were really ſincere, and which were received with an attention due to the moſt loyal of his ſubjects. That colony entertained the royal commiſſioners, who were ſent to New-England, in 1664, to ſettle univerſal diſputes, "according "to the meanneſs of its condition:" And it ſubmitted to the regulations propoſed by them with a readineſs which ſhews equally its purity of intention and its ſenſe of weakneſs. It engaged with great ardour in the Indian war, which afterwards broke out, and which threatened its ruin; but, owing to its bravery and perſeverance, proved the deſtruction of its enemy: And while the governor and general court apologized to that monarch for not informing him of their troubles, during the exiſtence of them, which they attributed to Philip, "an ambitious and "proud ſachem," they begged his acceptance of his ſpoils. In return, they ſolicited the protection of their ſovereign againſt the encroachments of their ungrateful neighbours on the conquered lands. Though their preſent was never received, their compliment and expreſſions of loyalty were extremely acceptable. A tract of land, denominated Mount-Hope, that had been ſubdued by their valour, was granted to them. A reaſon was aſſigned in ſupport of this liberality, which diſcloſes the opinion which was then entertained of the other colonies of New-England; "that, "as they were loyal, and ſhewed a diſpoſition to be obedient, it may be "an example to others." And they were promiſed, at the ſame time, farther privileges.[36] Nor were they ungrateful.[37] For, while they acknowledged the late favours conferred on "that poor colony," they petitioned, in terms which ſhewed how much they envied Connecticut and Rhode-iſland, for a new charter, in the room of their "old and indeed "imperfect grant."[38] Yet they did not acquire the object of their wiſhes and prayers. The agent, who was entruſted to ſolicit their affairs, immediately died; their papers were unhappily loſt; and, above all, Charles II. with a ſpirit that does honour to his reign, at that time meditated

ditated important plans of reformation for New-England. In November, 1683, they tranſmitted a new addreſs[19] to that prince, praying for what it was already determined ſhould never be granted; but humbly ſubmitting, in all things, to his deſires and commands. The mere language of compliment was conſtrued into a formal ſurrender of their ancient government. And when that fabric of independence, which we ſhall ſoon remark Maſſachuſets rear up with ſo much attention and addreſs, was overturned, New-Plymouth was annexed to that powerful neighbour, and was for ever diveſted of the honours incident to a ſeparate community.

Thus, from a beginning ſo extremely inconſiderable, have grown up, in a little period of years, almoſt unperceived, the populous, wealthy, and powerful, plantations of New-England. Whether we compare them with the Virginians of the South, or with the French who ſettled in their vicinity on the North, the rapidity of their progreſs will appear extraordinary. They were embarraſſed neither with the narrow regulations of a commercial aſſociation which long clogged the exertions of the former; nor with the monopolies that ſo long fettered the Acadians, and lengthened the days of their poverty. Freedom then was the enlivening principle of their purſuits; and property, landed and perſonal, invigorated the nerve of every enterpriſe. The ſame cauſes have at all times regularly contributed to the riſe or declenſion of colonies in every quarter of the globe.

AUTHORITIES AND NOTES.

[1] See a relation of the diſcovery and planting of New-England, which was publiſhed by the preſident and council, and dedicated to the prince of Wales, in 1622; Purchas's Pilg. 4 v. 1817. — [2] Ib. 1828; Smith's Voy. 46. — [3] See the Memorials publiſhed by the French court, ſubſequent to the peace of Aix-la-Chapelle, with regard to the boundaries of New-France and Nova-Scotia. — [4] Purchas, 4 v. p. 1831; Stith's Hiſt. Virg. 185. — [5] This patent, which has never been printed, becauſe ſo early ſurrendered, is in the old entries of New-England, in the Plant.

Off. — [6] It is in L'Eſcarbot's Hiſt. New-France, 397. — [7] Champlain's Voy. 1ſt part; and Purchas, 4 v. 1603-45, which he publiſhed, as he aſſures us, for the benefit of the Engliſh plantations. — [8] It is in L'Eſcarbot, 417; and a tranſlation, in Purchas, as above. — [9] Ib. — [10] L'Eſcarbot, in Purchas, as before. — [11] Smith, 115. — [12] Their memorials above-mentioned. — [13] Com. Jour. 1 v. p. 620-40-4.

[14] Parl. Deb. 1620-1, 1 v. p. 260-318-19. The following parliamentary debate, on the American fiſhery, which is important in itſelf, confirms the reaſoning in the text, and is therefore annexed. — From 1 v. Com. Jour. of the 25th of April, 1620, and p. 640-54.

Sir Edwin Sands: — That ſome have gotten a grant from the king, a grant of the land in Virginia. Two colonies firſt in Virginia; northern and ſouthward: The laſt hath proceeded with 100,000l. charge; the northern not. Now deſire to proceed; which called now New-England. That this fiſhery twice a year far better than that of Newfoundland. That the Virginian company, by deceit of maſters of ſhips, ſpent about eight years ſithence about 6,000l. That the northern colony hath got a ſole fiſhing there, yea, the company of Virginia. The king acquainted with it ſtayed the patent. That the colony of Virginia claimeth no appropriation of this fiſhing to then. This will bring in 100,000l. per annum hither in coin. The Engliſh, as yet, little frequent this, in reſpect of this prohibition; but the Dutch and French. This coſteth the kingdom nothing, but employeth ſhipping: Is carried on to Spain and Bilboa; where the people willingly pay for it ſilver; which may be lawfully tranſported, being for victual.

Moveth, therefore, a free liberty for all the king's ſubjects for fiſhing there. That the taking timber no prejudice to the colony. A beneficial fiſhing hoped for on the South of America. Pitiful! any of the king's ſubjects ſhould be prohibited, ſithence French and Dutch at liberty, who come and will fiſh there notwithſtanding the colony. That the northern colony of Virginia [New-England] now prohibiteth timber, where it is nothing worth, and take away the ſalt the merchants leave there.

Mr. Glanvyle: — That this committee may direct ſome government for the mariners; who ſpoil havens by caſting out ballaſt, &c.

Mr.

Mr. Secretary [Calvert]: — Doubteth the ſub-committee hath not heard the other part; doubteth the fiſhermen the hinderers of the plantation. That they burn great ſtore of woods, and choke the havens. Never will ſtrain the king's prerogative againſt the good of the commonwealth. Not fit to make any laws here for thoſe countries, which not as yet annexed to the crown.

Mr. Neale: — Three hundred ſhips at leaſt gone to Newfoundland out of theſe parts, [Weſt country]. That this complained of heretofore to the lords of the council. London engroſſeth all trades and places. That the patentees for this northern plantation, intended for the public good, intend their private; which hurteth the commonwealth. Second Edward VI. free liberty for all the ſubjects to go to the Newfoundland for fiſh: Now make men compound for places: Take away their ſalt. They cannot carry even proportion; but muſt either leave or lack. That the fiſhing there little above ſeven weeks. No leiſure to attend an admiral court. Pretence to reform abuſes; but was to ſet fines. Taxed a hogſhead of train-oil on every maſter of a ſhip that appeared not at his court. That the lords of the council gave an order againſt this, which thoſe planters have diſobeyed. Exacted great ſums, and ſhot off ordnance againſt the king's ſubjects. That London merchants, by reſtraining trade, undo all trade. That many things may be added to this bill; caſting out of ballaſt, &c.

Mr. Chidleigh: — To give ſome long day for the committing of this bill.

Mr. Guy: — If this houſe hath juriſdiction to meddle with this bill, would conſent to the proceeding thereof. That there are divers patents. He engaged for the plantation of Newfoundland. The Londoners in this to be commended, however their greedineſs in other things juſtly found fault with. That the king hath already done as much by his great ſeal as can be done here by this act. That the French planted there about thirty years ſithence. That proviſion made, the fiſhermen might have timber there. That the plantation ever furthered our Engliſh merchants. Moveth that the pirates may be repulſed if any come thither; and this to be provided for by the bill.

Mr.

Mr. Brooke: — That we may make laws here for Virginia; for, if the king give conſent to this bill paſſed here, and by the lords, this will controul the patent. The caſe divers for Gaſcoyne, &c. which principality of themſelves. To commit it.

Sir Edwin Sands: — That Virginia holden of the manor of Eaſt-Greenwich.

Committed to Sir Edwin Sands, burgeſſes of London and York, all burgeſſes of port-towns, and all that will come to have voices; this day ſeven-night in the Exchequer-chamber.

[15] Parl. Deb. 1620-1, 1. v. p. 116-17. — [16] Smith, 46-230; Purchas, 4 v. 1840.

[17] Voluntary agreements formed a very important title in the ancient juriſprudence of New-England. Wherever the Independents ſettled a colony without the authority of a charter, they founded their policy upon a contract, to which every one agreed. The following one, which is the oldeſt of any, ſhews the baſis whereon was erected the ſuperſtructure of the laws and conſtitution of New-Plymouth, and is therefore ſubjoined. — From Purchas, 4 v. p. 1843; and ſee the hiſtorians of New-England.

Aſſociation of New-Plymouth.

In the name of God, amen. We, whoſe names are here-underwritten, the loyal ſubjects of our dread ſovereign lord king James, by the grace of God, of Great-Britain, France, and Ireland, king, defender of the faith, &c. having undertaken, for the glory of God, and advancement of the Chriſtian faith, and honour of our king and country, a voyage, to plant the firſt colony in the northern parts of Virginia, do, by theſe preſents, ſolemnly and mutually, in the preſence of God and of one another, covenant and combine ourſelves together into a civil body politic, for our better ordering and preſervation, and furtherance of the ends aforeſaid; and, by virtue hereof, do enact, conſtitute, and frame, ſuch juſt and equal laws and ordinances, acts, conſtitutions, and ordinances, from time to time, as ſhall be thought moſt meet for the general good of the colony, unto which we promiſe all due ſubjection and obedience. In witneſs whereof we have ſubſcribed our names, at Cape Cod, 11th November, 1620. — Signed by forty-one perſons.

[18] Hubbart,

[18] Hubbart, in Hutch. Hiſt. Maſſ. 2 v. p. 463-7. — [19] Ib. 464; and New-Eng. Laws, abridg. 88; Rhode-Iſl. Laws, 171. — [20] Hutch. 2 v. p. 463-5. — [21] Ib. 468-71. — [22] Ib. 479-80. — [23] Neale's New-Eng. c. 3. — [24] Purchas, 4 v. 1831. — [25] Rym. Fœd. 18 v. 416. — [26] Purch. 4 v. p. 1872-3. — [27] Ib. for a copy of the charter: This patent, and its confirmation, in 1625, which were procured from the records in Scotland, were publiſhed in the French Memorials before-mentioned. — [28] Theſe Memorials. — [29] Purchas, 4 v. 1878. — [30] The letters of correſpondence between Kirk and the commander of Quebec, as well as the capitulation, are in Champlain's Voy. 2d part. 157-8, 215-16. — [31] Corps diplomatique, 6 v. p. 31.

[32] The following debate and reſolves of the commons, which are equally intereſting and deciſive as the former, eſtabliſh ſeveral important facts, and are publiſhed here, becauſe they equally authenticate the foregoing reaſoning. — From the 1ſt vol. Com. Jour. 688-97.

17th March, 1624.

Sir Edward Coke reporteth from the committee of grievances. Have condemned one, viz. Sir Ferdinand Gorges his patent for a plantation in New-England. Their counſel heard; the exceptions being firſt delivered them. Reſolved by conſent; that, notwithſtanding the clauſe in the patent, dated 3° Nov. 18° Jac. that no ſubject of England ſhall viſit the coaſt, upon pain of forfeiture of ſhip and goods, the patentees have yielded, that the Engliſh fiſhermen ſhall viſit, and that they will not interrupt any fiſhermen to fiſh there: For, he no new diſcoverer; fiſhermen of this and other nations having fiſhed there before his patent. Drying of nets, ſalting of their fiſh, &c. incident to their fiſhing: Whereunto he alſo agreed. After he was gone after the debate, over-ruled the fiſhermen might take timber for repair of their ſhips: 1° Quia incident; 2° taken ſo before his patent; 3° fiſhermen never take any timber with them; 4° bring in great ſtore of money for fiſh.

Reſolved: — Engliſh fiſhermen ſhall have fiſhing with all incidents of drying fiſh, nets, timber, &c. 2dly, That the clauſe of forfeiture, being only by patent, and not by act of parliament, void.

Reſolved

Reſolved upon queſtion: — That the houſe thinketh fit, the fiſhermen of England ſhall have fiſhing there, with all the incidents neceſſary, of drying nets, and ſalting, and packing.

Upon the ſecond queſtion; in the opinion of this houſe, una voce, the clauſe of confiſcation void and againſt law.

Upon the third queſtion; in the opinion of this houſe, the fiſhermen of England may take neceſſary wood and timber for their ſhips and boats uſe in fiſhing there.

3d May, 1624.

The debate concerning the fiſhing in New-England renewed.

Sir Wm. Earle: — For the planters; who more beneficial to the commonwealth than the fiſhers.

A proviſo in parchment tendered to this bill, which read.

A ſecond proviſo tendered by Mr. Guy, which read.

Sir Ed. Cooke: — Sir F. Gorges his patent condemned, for the clauſe that none ſhall viſit with fiſhing upon the ſea-coaſt. This to make a monopoly upon the ſea, which wont to be free: A monopoly attempted of the wind and the ſun, by the ſole packing and drying of fiſh.

Mr. Secretary: — That free fiſhing prayed by this bill overthroweth all plantations in thoſe countries. That liberty by this bill to cut down wood, within one quarter of a mile of a dwelling-houſe; which exceeding prejudicial to the planters. So for Newfoundland.

[REMARK. Sir George Calvert then poſſeſſed the territory of Avalon in that iſland, where he had planted a colony.]

Mr. Glanvyle: — The firſt ſtage worth ten of the reſt. The proviſion for timber in Newfoundland omitted; becauſe, that an iſland having no rivers: But New-England hath divers rivers into it.

Both the proviſos upon queſtion rejected. The bill upon queſtion paſſed.

[33] Smith, 47; and ſee his Map of New-England, which was divided into ſhares, and publiſhed by Purchas. 4 v. p. 1873; New-England Ent. in Plant. Off. A. p. 222.

[34] Neale's

[34] Neal's New-Eng. ch. 3. Hutch. Append. 2 v. N°. 1. — [35] Ib. — [36] New-Eng. Papers, Plant. Off. 18-36. New-Eng. Ent. 2 v. p. 5. — [37] Their grateful addreſs to Charles II. Ib. 76.

[38] The petition of the general court, which exhibits a ſketch of the ancient hiſtory of the colony as drawn by itſelf, ſhews a very different ſpirit from the addreſſes of modern times. — From New-Eng. Papers, v. 3. N°. 353.

Moſt gracious and dread ſovereign,

It may juſtly render us guilty of the high crime of ingratitude to God and your majeſty, ſhould we not in all humble thankfulneſs acknowledge your majeſty's moſt ſignal clemency and eſpecial grace, in ſtooping ſo low as to caſt an eye of royal favour upon this your poor colony: Not only upon our firſt addreſs to your majeſty (ſoon after your happy reſtoration) in your gracious acceptance of that poor ſcrip to be a tranſcript (as indeed it was) of our loyal hearts: And with like grace accepting that poor mite of our reſpects in our reception and entertainment (according to the meanneſs of our condition) of your majeſty's royal commiſſioners in the year 1664; together with the gracious aſſurance given us, under your royal hand, of the continuance and enlargement of our liberties and privileges, civil and religious: But now alſo again, with a ſuperadded act of your royal bounty and juſtice, in confirming to us the lands of Mount-Hope, (notwithſtanding the earneſt petition and endeavours of ſome to obtain it from us,) which, in defence of your majeſty's intereſt and our lives, coſt us ſo much blood and treaſure, being undoubtedly within our patent grant: And farther, that, out of the gracious diſpoſition and free motion of your own princely benign mind, you were pleaſed to invite and encourage us to make our due application to your majeſty, for the granting and confirming ſuch liberties and franchiſes to us, as may be for the more happy government of your majeſty's ſubjects in this colony, which the largeneſs of your royal underſtanding eſpied to be wanting in our former charter, (from the honourable the council of Plymouth,) not ſo eaſy for ourſelves to diſcern, and through your princely care therein become as eyes to the blind, and a royal foſter-father to this your poor

nurſling in this remote wilderneſs: The contemplating whereof both influenceth and animateth us (notwithſtanding the deep ſenſe of our own ineptneſs to ſpeak unto our lord the king, and of our great impotency, by reaſon of our poverty, remoteneſs, and otherwiſe, as to theſe approaches) to preſent our humble ſupplication unto our prince, (in whoſe ſight we hope to find grace,) for your majeſty's gracious protection of us, in the continuance of our civil privileges and religious liberties, in the walking with peaceable and loyal minds in the faith of the goſpel, according to the order of the goſpel; which order, according to the general profeſſion here, is the congregational way therein, only differing from our orthodox brethren, but agreeing as to the doctrinal points of religion with the profeſſion of the church of England and other reformed churches, and not enforcing the liberties of others, who are of orthodox principles and good converſation, though differing from us in point of church order; each doing their parts for the due ſupport and encouragement of an able, godly, orthodox, miniſtry, in every townſhip and plantation, to preach ſound doctrine and further true piety on goſpel principles, which is the beſt means to ſecure and oblige to true loyalty, (though they ſhould be of differing perſuaſions as to church order,) and the beſt preſervative againſt degeneracy from the Chriſtian manners, and religion of the Engliſh, into atheiſm and brutiſh paganiſm: The pure exerciſe of which religion, without offence and without the impoſition of other ceremonies on them in the public worſhip of God, together with the enlargement of his majeſty's dominions, was the known end of the firſt comers hither in the year 1620; leaving the pleaſant land of their nativity, tranſporting themſelves and children over the vaſt ocean, willingly conflicting with many grievous difficulties and ſufferings, in this vaſt howling wilderneſs, amongſt wild men and wild beaſts: For, though they might have enjoyed thoſe religious liberties, according to the beſt light of their conſciences, under the ſtates of Holland, who offered them great favour there, yet, through their innate loyalty, were reſtleſs that they themſelves, and their children after them, might live under the protection of their own native prince, and enlarge his dominions: And therefore, having

ving firſt obtained leave of king James, of happy memory, did adventure, (at their own proper coſts and charges,) through many foreſeen and afterwards felt ſufferings, to break the ice, and ſettle the firſt Engliſh plantation in this then uncultivated remote part of your dominions: Where, through the great goodneſs of God's protecting favour and bleſſing on their extraordinary care and hard labour, they became a ſuccour and help to many of his majeſty's ſubjects, both planters and others, who fell upon this coaſt; and, after ſome years here ſpent, and by conſent of their then gracious ſovereign, did obtain letters patent from the honourable council of Plymouth, which, among other privileges therein granted, and through the good hand of God upon us, and the favour of your royal progenitors and of your majeſty, we have had now near about ſixty years lively experience of the good conſiſtency of the order of theſe churches, with civil government and order, together with loyalty to kingly government and authority, and the tranquillity of this colony, with the propagating of religion among ſundry of the poor native Indians. May it therefore pleaſe your moſt excellent majeſty, of your eſpecial grace and mere motion, to favour us with your gracious letters patents for our incorporation into a body politic, with ſingular the privileges as your majeſty has been accuſtomed to grant to other colonies, ſo to your majeſty's colony of Connecticut: It becoming us to be humbly confident in your majeſty's favour for granting us as ample privileges as to them; ſeeing that we bore the brunt of the firſt Engliſh colony, here ſettled for the propagating of the goſpel and enlarging your majeſty's dominions, and, by the providence of God, here firſt arriving in the winter ſeaſon, expoſed to the extremity thereof, without houſes to ſhelter in; had not the opportunity to view the country, but were forced to ſit down in the barreneſt part thereof, (as is by many well known,) and deſtitute of every convenient place, within our precincts, for trade of beaver or fiſhing, as other parts of the country are advantaged with; eſpecially ſince Penobſcot, and other of thoſe eaſtern parts fit for trade, granted to us in our patent, were by the French forcibly taken and detained from us, and (as we are informed) were ſince granted by your majeſty to his highneſs the duke of

York; beſides our great poverty, by reaſon of the late wars with our barbarous enemies.

New-Plymouth, 5 Septemb. 1680. Josiah Winslow, governor, for the general court.

39 The ſubjoined addreſs of the general court to Charles II. ſhews, among other things, the very ſlight declarations of ſubmiſſion, which were conſtrued to contain a reſignation of its ancient government. — From N. Eng. Ent. 2 v. p. 190.

We, the governor and council, in behalf of the general court — Sheweth — We look upon ourſelves as under the higheſt obligations to pray for the life of our ſovereign lord the king, under whoſe favour and protection we enjoy ſuch tranquillity: So underſtanding, by your majeſty's declaration, and by the friendly courteſy of Mr. Randolph, that God was graciouſly pleaſed wonderfully to deliver your ſacred perſon from that late horrid treaſonable conſpiracy therein mentioned [the Rye-houſe plot]: We could do no leſs than in duty we were bound, to appoint the 15th of this inſtant November as a day of thankſgiving to God for his great mercy in his ſignal ſalvation of your royal perſon from that and all other helliſh conſpiracies and moſt wicked deſigns. Partly by your majeſty's weighty occaſions, and partly by the miſlaying of the copy of our former patent, ſent over by governor Winſlow; ſo it is, that we have received no other anſwer to our humble petition, than that ſome hopeful progreſs had been made in the buſineſs of our patent, and that your majeſty hath a good opinion of our loyalty, for which we are thankful: And now, having ſent over another copy of our patent, we have found in our hearts to renew our ſupplication, that your majeſty may graciouſly pleaſe to give direction that a bill may be prepared for your royal ſignature; granting ſuch powers and privileges, as hath been formerly petitioned for, as ſoon as your majeſty's more weighty concerns may give admittance thereto, and with as much eaſe, as to the charge thereof, as may be; conſidering our great poverty, partly by the great barrenneſs of the moſt of our lands, late blaſtings of our grain, and great deſolations

tions of the barbarous Indians. — We ſtill deſire to ſubmit theſe propoſals of our deſires to your majeſty's regulations, as you ſhall ſee fit for us, hoping to find grace in your ſight, eſpecially as to our religious liberties; to enjoy which, without offence, under our natural prince and liege lord, and the enlargement of his dominions, was the known end of the firſt comers great adventure into this remote wilderneſs, whoſe poſterity have continued in the ſame principles, both of religion and loyalty; and we hope never to depart from the ſame. — Moſt gracious and dread ſovereign; — we humbly proſtrate ourſelves at your royal feet, begging pardon for this boldneſs, and for what elſe your piercing eye hath at any time ſeen amiſs in us, deſiring readily to ſubmit to your majeſty's deſires and commands. — Now may God moſt high ſtill preſerve your royal perſon from all traiterous, bloody, and deceitful, men! &c.

New-Plymouth,
Novemb. 1683.

THO. HINKLEY, governor,
in the name of the general court.

CHAP.

CHAP. V.

Charles I. *proclaimed.* — *His opinion of the colonies.* — *Eſtabliſhes a government for Virginia.* — *Reflections.* — *The parliament meets.* — *Its character.* — *The ſecond parliament aſſembles.* — *Its proceedings.* — *Harvey's adminiſtration over Virginia.* — *A legal conſtitution reſtored.* — *Berkeley's government.* — *Aſſembly's loyal petition to the king.* — *Charles* II. *tranſmits a commiſſion from Breda.* — *Ordinance of the parliament.* — *Subjected to their power.* — *Colonial trade reſtrained.* — *The Virginians throw off the uſurpation.* — *Obſervations.*

CHARLES I. a prince young and unexperienced, aſcended the throne of his anceſtors in the beginning of the year 1625. And, moſt unhappily for himſelf, together with the crown, he inherited the unfortunate principles and prejudices of his father. The ſeeds of diſcord, that had already been diſſeminated in a fruitful ſoil, ſoon produced the moſt diſagreeable fruits. And a ſpirit of jealouſy overſpread the land, which the unadviſed king poſſeſſed not the talents either to prevent or allay.

The Engliſh colonies that monarch juſtly deemed "a part of the royal "empire, deſcended upon him with the other dominions of the crown;" and, profeſſing himſelf of ſimilar ſentiments, with regard to colonial tranſactions, as thoſe of his predeceſſor, he conſiſtently reſolved, "that there "ſhould be only one uniform courſe of government through his whole "monarchy." When the writ of quo warranto had ſtruck the reins of adminiſtration from the hands of the Virginian company, they were ſeized on therefore by him, as only fit for royal guidance. The affairs of the plantations were too much the object of his care to permit him to heſitate long with regard to the courſe he ſhould follow. And being "of the "ſame judgement as his father was for the government of the dominion "of Virginia," he determined to tread in the ſame ſteps.[1]

Together with his crown Charles ſeems to have inherited the diſlikes of his predeceſſor. Vain was it for James to oppoſe the introduction of tobacco,

tobacco, not only with the authority of his proclamation but by the eloquence of his pen. In vain he aſſured his ſubjects that the ſmoking of that vile weed was a cuſtom loathſome to the eye, hateful to the noſe, harmful to the brain, dangerous to the lungs. According to the uſual courſe of things, oppoſition gained over proſelytes, and what was deteſted by the prince was naturally admired by the people. Deeming it of great conſequence neither to deſert nor neglect the colonies, which his father had ſo happily planted; conſidering them as yet in their infancy, and poſſeſſed of no other commodity than tobacco; obſerving that the deſire of taking it ſtill increaſed, notwithſtanding every obſtruction; the preſent king, during the firſt years of his reign, iſſued a great variety of proclamations on this ſubject, which demonſtrate equally the caprice of his policy and the extent of the legiſlative authority that he exerted, during the receſs of parliament, over England as well as her ſubordinate dominions. No commerce however gainful, except that of a luxury, which came recommended by the influence of novelty, or was intruded by the all-powerful decrees of faſhion, could have withſtood the regulations beforementioned, equally frequent, irregular, and pernicious. The meeting of parliament, however, not long after, gave a check to the exerciſe of pretenſions that would have ſoon ſwallowed up every other power in the ſtate.

The demiſe of the crown having annulled all former appointments, that monarch, in May, 1625, named a new governor and council for Virginia: And their commiſſion and inſtructions demonſtrate the ſtate of the colony at that period, as well as the nature of the new conſtitution which was then eſtabliſhed. They were empowered to govern and puniſh "his ſubjects inhabiting Virginia," and to direct its affairs as fully as any governor and council reſiding there might have done within five years laſt paſt: They were inveſted with the general authority incident to thoſe officers in that colony; never reflecting, that the abſolute power, which he thus conferred, was equally inconſiſtent with the rights of the coloniſts as Engliſhmen, as contrary to the acts of aſſembly paſſed in the year 1624, with the expreſs deſign of reſtraining the irregularities of the governor within the boundaries of law: And they were required,

"to

" to proceed in all things according to former and preſent inſtructions, " and to ſuch as they may receive from his commiſſioners of planta- " tions." They were inſtructed, to take care that God ſhall be duly ſerved; " to adminiſter the oaths of allegiance and ſupremacy to all reſi- " dents," and to ſhip home immediately thoſe who ſhall refuſe them; to enquire, " by lawful way," what eſtate belonged to the late company, in November, 1623, and to apply the remains of it to the public uſe; to cauſe the " old ſettlers" to entertain " new comers," who ſhall be allowed to plant on the company's land, on the former conditions; to oblige all to go to the wars, and " to rate them in proportion to their " abilities for their defence;" to allow freedom of commerce in the colony, notwithſtanding the proclamation obliging the merchants to receive tobacco at three ſhillings a pound; to cauſe the people to plant corn, that they may at all times have previouſly a year's proviſion, and to raiſe more ſtaple commodities, as tobacco was daily falling in value. And they were warned " againſt all intercourſe with ſhips newly arrived;" giving as a reaſon, " that foreign war may be daily expected."[1] The piques of miniſters had already engaged England in a conteſt with Spain; the miſguided Charles was now ready to plunge into a freſh one with France, upon the moſt frivolous of all pretences, the amours of a favourite.

The conqueſt of Canada and Acadie, by Kirk, during the war that enſued, has been paſſed over in ſilence by hiſtorians, becauſe it appeared in thoſe days of no real conſequence in the ſyſtem of European politics. But, from the reſtitution of thoſe territories to France, in the year 1632, may be dated the commencement of a long train of ills to the colonies and to England. To that tranſaction may be fairly traced back the recent colonial diſputes, and the preſent momentous criſis.

But neither the commiſſion nor the inſtructions mention expreſſly, or even allude to, an aſſembly, neither do they refer to the laws of England, nor to the acts of the provincial legiſlature, as a rule of government. Entertaining no warm predilection for the rights of the ſubject, that monarch probably inferred, that, as the colony had derived its right to a provincial legiſlature, in which the people were repreſented, from an ordinance

ordinance of the company, the privileges of the former were buried in the ſame grave with the charters of the latter; that, as the colonial conſtitution was laid in the duſt, the laws which had been enacted under its authority remained no longer in force; that it was but juſt to rule a ſubordinate territory with the ſame arbitrary ſway with which he had determined to govern the ſtate. And facts juſtify this argumentation. The authority inveſted in the governor and council was purely legiſlative and arbitrary; and the commiſſion referred them back, for a rule of conduct, to that period of the Virginian annals, when the greateſt tyranny prevailed. With a ſtrange diſregard of the principles of the conſtitution, they were empowered to make laws, and to execute them; to impoſe taxes, and to enforce payment. They were ordered to ſeize the property of the company, and to apply it, without its aſſent, to the uſe of the public. And they were required to tranſport coloniſts to England, to be there puniſhed for crimes committed in Virginia. On the pretence, as frivolous as it was untrue, "that the tobacco of the planters "could not be managed for their good, unleſs it was brought into one "hand," a rigorous monopoly of the ſole importation of that commodity was eſtabliſhed, to be managed by the royal factors for the royal uſe.[4] And their commerce was reſtrained at the ſame time that their perſons were enſlaved.

Thus the Virginians, far from going forward in acquiring new privileges, were once more plunged into that abyſs of ſervitude from which they had emerged upon the introduction of an aſſembly; and, during that long period, from the demiſe of James almoſt to the commencement of the civil wars, they ſuffered thoſe miſeries which freemen feel, when, to the injury of being bereaved of their birthright, inſult is added. Yet, for a few years, they did not undergo probably much real oppreſſion. The company being diſſolved, they were left, as we are aſſured, in a manner to themſelves, and wonderfully increaſed beyond expectation; they remained under the adminiſtration of their late governors and other officers, who reſpected their privileges, becauſe they loved the colony: And they found means to elude the force of the various edicts which were publiſhed to regulate or reſtrain the commerce of a ſtaple, that has at all times ſo much

much promoted the profperity of Virginia. Provoked by the cruelty of the Indians, and encouraged by the many adventurers lately arrived, the coloniſts ſent out different expeditions for the extirpation of the aborigines, who no more appeared on the banks of James-River, or intermixed with the new-comers, whom they mortally hated, and now feared. The capital was in a great meaſure deſerted; and, purſuing their own inclinations, the whole inhabitants formed once more about eighteen ſeveral plantations.

When the firſt parliament of this reign aſſembled meanwhile, in February, 1625-6, they ſoon diſcovered ſymptoms of that jealouſy which had gone forth. And, compoſed chiefly of the ſame great men as thoſe of the late reign, they uniformly went over the ſame track of colonial policy, but with ſteps far more firm and deciſive. The bill, which had engaged ſo much of the time and the attention of former ſeſſions, was inſtantly adopted by the preſent, but with a title more expreſſive of its genuine policy. And an act, "for maintenance and increaſe of ſhip-"ping and navigation, and for the freer liberty of fiſhing voyages upon "the ſea-coaſts of Newfoundland, Virginia, and New-England," was brought in. It was ſoon paſſed by the commons, and ſent to the lords by the treaſurer: From whom, however, it never returned. A bill, ſo often diſcuſſed and then ſo thoroughly underſtood, had become acceptable to all, and found its way through every ſtage in the houſe of commons, without oppoſition or debate:[5] And theſe notices, however trivial they may ſeem, ſhew a progreſs in the underſtandings of men, and a firmneſs in aſſerting what they deemed their rights. Nor was the ſpirit of the commons to be repreſſed by the loſs of a bill, which at length had become a favourite of the nation. In a ſtrong repreſentation of grievances, which they preſented to Charles, in May, 1626, they inſiſted, among other objects, "that the reſtraint of the ſubject from the liberty "of a free fiſhing, with all the neceſſary incidents, was a great national "grievance.[6] As well the ſpirit diſplayed by that animated aſſembly as its refuſal to grant to the neceſſities of the ſovereign a ſecond ſubſidy, during the ſame ſeſſion, brought on a diſſolution; which, while it raiſed, in a high degree, the reputation of the national repreſentatives in the eyes of

of their countrymen, only lowered his. And a proclamation, that could have been iſſued by imprudence itſelf, prohibiting the publication of a remonſtrance of the late diſſolved parliament, tended only to raiſe the public curioſity, and prepared the minds of men for future events.

That miſguided prince neither poſſeſſed the œconomy to enable him to live within his income, nor prudence to induce him to yield with a good grace to the deſires of his people. His neceſſities conſtrained him to call a new parliament in the beginning of the year 1627-8; and they appear to have been as attentive, but more vigorous and determined in aſſerting the national freedom and ſupporting their own rights, as any of their predeceſſors. But, the progreſs of the commons, not only in their conceptions of what they deemed their own and the nation's rights, but their ſpirit in protecting both, had been prodigious from the reign of James to this time. During the former period they ſuffered it to be debated amongſt them, whether that prince, by his prerogative alone, might not tax the ſubject; and Coke and Selden had been employed to prove, by ranſacking public archives, that he could exerciſe no ſuch authority: Yet, without ſearch of records, or debate, it was now reſolved, with one voice, "that the king cannot levy any impoſition or duty on the people "without their conſent by act of parliament:" And they compelled their ſovereign, after a vehement ſtruggle, to give his aſſent, without reſerve, to the juſtly-celebrated petition of right. Applications redreſſive of grievances had been formerly waved upon the interference of a king of England, which would appear ſo extraordinary in modern times; but now relief from oppreſſion was firmly inſiſted on as an indiſputable right.[7] Living under a conſtitution, which is now aſcertained and known, and beneath a government the mildeſt and moſt rational on earth, we can obſerve, in tranquillity, the contentions of our fathers, the progreſs of public principles and of laws, as objects of curioſity or inſtruction.

The bill, which had ſo often miſcarried, was once more revived; and, after hearing, in oppoſition to it, the counſel of Sir George Calvert, who had been lately created baron of Baltimore, and who had for ſome years ruled a colony in Newfoundland, by the name of Avalon, was again paſ-

ſed by the commons: But, owing to the continuance of former clauſes, it met with its accuſtomed fate.[8] The vigorous and perſevering efforts of the commons proved nevertheleſs deciſive. For the important rights, which they had ſo ſtrenuouſly contended for, were expreſſly reſerved to all the ſubjects of England and Ireland, in the ſubſequent colonial charters, which were granted by Charles I. and his ſucceſſor.[9] Thus animated exertions, in a good cauſe, always prove ſucceſsful; and ſucceſs never fails to enliven perſeverance.

The Somer-iſles, which are now better known by the name of Bermudas, having been granted to the Virginian company, by the third charter of James, were immediately conveyed by them to one hundred and twenty of their own number. And theſe, obtaining a patent from that prince for its government, long ruled that little community with the ſpirit of a corporation ſevere and illiberal. Among other oppreſſions, they impoſed a tax of four-pence a pound on the importation of tobacco of the iſland, and ſeized it till the duty was paid. The coloniſts felt no leſs the ſeverity than the illegality of a proceeding that would now appear ſo extraordinary and intolerable. And they applied to the privy-council for reparation. Their complaint was referred to the commiſſioners of enquiry concerning the affairs of Virginia; who ordered that commodity to be delivered to them on paying two-pence a pound: And this impoſition, however unjuſt, was ordered to be collected till the company's debts were diſcharged.[10] The Bermudeans ſubmitted to an authority which they were unable to withſtand, though they could not admit its equity, till a new ſcene of relief opened to view. And they were now no longer at a loſs where to apply for redreſs. For, a power had at length ariſen in the nation, which reviewed the adminiſtration of the laws; which inſpected the conduct of every department of ſtate, ſometimes making the greateſt miniſters tremble; which liſtened, with attention, to every complaint of oppreſſion: And to the commons, therefore, they now complained. According to the uſual cuſtom of thoſe days, the houſe ordered "a petition "concerning this impoſition to be preſented to the king;" which, at that time, had nearly the deciſive effect of command." But, though Charles promiſed to take it into conſideration, no effectual relief ſeems to

to have been given. For, a bill was ſoon after brought in "for con-"firmation of the letters patent, made by king James, to the governor "and company of the Somer-iſlands." It regularly paſſed that houſe, but, owing to the diſtractions of public proceedings, became not an act of the legiſlature.[12] The commons, conſidering a royal patent too unconſtitutional to empower a corporation within the realm to impoſe taxes on the coloniſts, intended to have given a juriſdiction, which could not be legally exerciſed without the authority of the ſtate, and which an act of parliament could alone confer. And the petition of right fully juſtified this reaſoning. The planters of Virginia were then equally aggrieved, and equally ſought a ſimilar remedy. Their complaint was immediately referred, by the commons, to the committee for the Somer-iſles, who afforded them the ſame relief, with the ſame ſucceſs. The parliament was, ſoon after, ſuddenly prorogued:[13] And Charles and the commons, feeling mutual wrongs and foreſeeing more, ſeparated, not ſoon to meet again, becauſe both were highly diſguſted with each other; and becauſe the pretenſions of both parties appeared to each other undefinable, and conſequently altogether inadmiſſible as a ground of accommodation.

The diſcontents of that unfortunate reign now ripened faſt into perfect maturity; and thoſe diſputes commenced, which cloſed a civil war by the exaltation of Cromwell upon the ruins of the conſtitution. From the termination of that ſeſſion, the parliament did not aſſemble again for twelve years; and, when they at length convened, they were too much engaged either in repairing the breaches that Charles had made in the ſyſtem of laws, or in purſuing intereſted projects of ambition or revenge, to attend much to colonial affairs. And little notice ſhall we find taken of them by the ſovereign legiſlature, till the momentous contention for power, between the different orders of the ſtate, was almoſt finally cloſed.

That governor, whom Charles had been ſo anxious to appoint for Virginia, had no opportunity of exerciſing thoſe powers, equally illegal and extraordinary, with which he had been inveſted. His death, in the beginning of the year 1627, put an end to his authority, and prevented

that

that colony from ever feeling the full extent of it. In his room, John Harvey was nominated governor, in March, 1629; and his commiſſion and inſtructions were preciſely the ſame as thoſe of the former." He departed ſoon after for the colony, carrying with him a conſiderable emigration. All hiſtorians agree in repreſenting the tenor and ſpirit of his adminiſtration as an exact counterpart of that which unhappily too long ruled in England: "Severe in his extortions and forfeitures, proud in "his councils, and unjuſt and arbitrary in every department of his go-"vernment."[14] The irregularity of the conduct of his ſovereign, with regard to colonial affairs, kept pace with that of the governor in Virginia. The "inordinate deſire of taking tobacco increaſing, and the "profit by planting it in England continuing," notwithſtanding the proclamations of the late king, a new ordinance was promulgated in Auguſt, 1627. It commanded; that no tobacco ſhall be planted in England or Ireland, and that juſtices of the peace and conſtables ſhall pluck it up; that all imported from the colonies ſhall be delivered to the king's commiſſioners, at a price to be agreed on, of whom every one ſhall buy it; and that, for the prevention of frauds, no foreign tobacco ſhall be imported from the colonies.[15] And to be relieved from all theſe oppreſſions, as impolitic as they were unjuſt, we have ſeen the Virginians applying to the commons, for redreſs, in vain.

The committee of council for the colonies, at length however pitying the miſeries of men, tranſmitted a new inſtruction to the governor and council, in July, 1634. It required, that "intereſts acquired under "the corporation" ſhould not be impeached; that the coloniſts "for "the preſent may enjoy their eſtates and trades," as before the recalling of the patents; that lands "ſhall be diſpoſed of to freemen, as was "done before the year 1625."[16] But theſe conceſſions came far ſhort of that remedy which the enormity of their oppreſſions ſeems to have required; and, though they may have palliated the diſorders of the colony, they by no means effectuated a ſatisfactory cure. The Virginians, rouſed almoſt to madneſs by oppreſſion, ſeized their governor, and ſent him priſoner to England, accompanied by two deputies, to repreſent their grievances and his miſconduct.[17] But little ſuited was the manner of

of the application to procure them redreſs from the adminiſtration of thoſe days. The conduct of both appeared in a very different light in England to what it had done within the colony; and the governor, being honoured with a new commiſſion, which conferred former powers, was ſent back to Virginia in April, 1637.[18] The wiſe reflected, that the government, which knows not when to give way to the juſt complaints of the ſubject, is fated to be undone.

The vanity of triumph had probably more influence, over a mind naturally ſevere, than the virtue of moderation; and, upon his return, he continued a rule of adminiſtration, which, at the ſame time that it had procured him reward, has entailed diſgrace upon the reputation of his ſovereign.[19] But, the complaints of the coloniſts became at length too loud to be unattended to, and too vehement to be any longer withſtood; and Harvey's commiſſion was revoked in January, 1638-9. During the ten years adminiſtration of that magiſtrate, the Virginians ſeem to have been ruled rather as the vaſſals of an eaſtern deſpot than as the ſubjects of the king of England, entitled to Engliſh liberties. The governor and council, appointed by the crown, were inveſted with the legiſlative power. They impoſed taxes on the coloniſts without their conſent. The prince reſtrained their trade by his proclamations. They enjoyed hardly the privilege of complaining, the laſt reſource of the unfortunate and the weak. And theſe facts demonſtrate, that they were governed as a conquered people, without either moderation, or good humour, or juſtice. The progreſs which the Virginians made, during that ſad period of their annals, in population, induſtry, wealth, or in thoſe purſuits that tend to refine or animate a people, was in exact proportion to the extent of the liberty which they enjoyed.

It is adverſity which draws forth every latent virtue of the human mind. The oppoſition, that Charles had now met with in every part of his dominions, probably ſoftened his ſpirit into ſome reſpect for the rights of men, for the privileges of his ſubjects. And he at length perceived the juſtice, perhaps the neceſſity, "of giving due encouragement "to that plantation." Sir William Berkeley was appointed governor of Virginia in the beginning of the year 1639; and his commiſſion was

extremely

extremely ſimilar to that of his predeceſſor." But its recital declares the royal intention, "that the colony ſhould be regulated, as well in eccle-"ſiaſtical as temporal government, according to the laws of this realm," which he intended to eſtabliſh there. And his inſtructions" evince a prodigious change in colonial policy. Among other things he was directed: To ſummon the burgeſſes of all the plantations, who, with the governor and council, ſhall conſtitute the grand aſſembly, with power to make acts for the government of the colony, as near as may be to the laws of England; to cauſe ſpeedy juſtice to be adminiſtered to all, according to the forms of this realm; to oblige the maſters of veſſels, freighted with the productions of the colony, to give bond before their departure to bring the ſame into England; giving for reaſon, "that many ſhips carry "ſuch commodities into foreign countries, whereby the king loſes the "duties thereupon due, nothing being anſwered in Virginia;" and to forbid all trade with foreign veſſels, except upon neceſſity. Thus, while in England and in Scotland they were preparing for civil war, were given, to the wiſhes of the Virginians, a provincial legiſlature, a regular adminiſtration of juſtice, a government of laws. And, if the ſtructure of liberty was not abſolutely completed, "that which was given them, "ſays their hiſtorian," was a conſtitution to their hearts content." They were reſtored to that ſyſtem of freedom, which they had derived from the Virginian company, and which the writ of quo warranto had involved in the ſame ruin with the corporation itſelf. And this beneficial change in their government made an alteration in the ſpirit of the people equally advantageous.

To the genius of Cromwell has been miſtakingly attributed the meaſure of creating the monopoly of the colonial trade, which was eſtabliſhed by an ordinance of the parliament, carried into execution during the protectorate, and, at a ſubſequent period, completely ſettled by the act of navigation. But, it is now apparent to whom the praiſe or the demerit of that policy ought to be aſcribed. If the principle of that famous ſyſtem deſcended from the father to the ſon, it was Charles who firſt attempted to carry it into practice, by the very means now ſo familiar in our laws. And its deſign was declared to be, "that the ſta-

"ple

" ple of the commodities of the colony may be made here;" that " the " king might not be defrauded of his cuſtoms;" that " the nation might " be benefited, after expending ſo much upon that plantation, and " tranſporting thither ſo many ſubjects." But we ſhall find that it required the continued exertion of ages to execute it, without perfect ſucceſs at laſt.

The appointment of a governor ſo different from Harvey, but, above all, a revolution in its conſtitution ſo eſſential and conſiderable, gave the greateſt ſatisfaction to Virginia: And its former good humour returned with its preſent happineſs and proſperity." Yet, a felicity ſo great as it now enjoyed was, alas! of ſhort duration. Alterations in political œconomy, when ſudden and extraordinary, are always pernicious, and, even when well-intended and advantageous, are ſometimes extremely inconvenient. When thoſe inſtructions, and that policy, which have been mentioned, were rigorouſly executed, that province ſadly experienced the truth of this obſervation. A commerce, then only in its infancy, and which had long ſtruggled under the preſſure of arbitrary regulations by proclamation, was at length almoſt totally deſtroyed. A ſimilar ſpirit to that which then deſolated England aroſe, and filled up the meaſure of its unhappineſs. The cup of civil diſſenſion was embittered by the intermixture of religious differences: Nor was the diſeaſe in the leaſt mollified, but rather inflamed, by the acts that were made, " to prevent ſectary " infection;" which prohibited the preaching of the doctrines of the puritans:[33] And thoſe miniſters of Maſſachuſets, whoſe zeal carried them thither in order to convert the ungodly Virginians, were obliged to return without ſucceſs.

The diſcontented party did not find it difficult, at a time when every complaint againſt Charles was received with avidity, to preſent a petition to the houſe of commons, in the name of the aſſembly; " praying for the " reſtoration of the antient patents and corporation government." But the governor, the council, the burgeſſes, actuated by a very different ſpirit from that of their predeceſſors in the year 1624, no ſooner heard of a tranſaction ſo contrary to their views and to truth, than they tranſmitted an explicit diſavowal of it; And they ſent an addreſs to that

prince, acknowledging his bounty and favour towards them, and earneſtly deſiring to continue under his immediate protection. Nothing could be more acceptable to him than this ſpirited diſavowal; and, after his retirement to York, he did not fail to aſſure them, "that he would "never conſent to the introduction of any company over them."[24] The Virginians were not ungrateful. Animated with a genuine ſpirit of loyalty, they ſuffered every inconvenience; they braved every danger: And they remained unalterably attached to the cauſe of their ſovereign.[25] What a fine leſſon of inſtruction does this tranſaction offer to princes! It ſhews them, at what a cheap rate they may make their people happy, and procure their gratitude.

The exile of Charles II. did not altogether prevent his attention to his faithful Virginians. He tranſmitted from Breda, in June, 1650, a new commiſſion to Sir William Berkeley, as governor: And it was almoſt the ſame as his former one. It declared the royal intention "of ruling and "ordering Virginia according to the laws and ſtatutes of England, "which are to be eſtabliſhed there." It appointed the governor and council a court for determining all crimes and miſdemeanors, conformably to the rules of Engliſh juriſprudence. It contained an additional clauſe, dictated by his ſituation: For the prevention of the rebellion of ſubjects, or the invaſion of enemies, it empowered them "to build "caſtles and fortifications, at the expence of the planters."[26] And the event demonſtrated, that this proviſion was as prudent as it was neceſſary. Thus, while that prince was not permitted to rule over England, he exerciſed the juriſdiction which belonged to him over Virginia.

The commons, having at length, by the moſt extraordinary exertions of ſkill, of courage, of power, gained a complete triumph over their opponents in Europe, had full leiſure to turn their undivided attention to the plantations; to grant favours to their friends, and to inflict puniſhment on their adverſaries. An ordinance was paſſed, in October, 1650, "for prohibiting trade with Barbadoes, Virginia, Bermuda, and An-"tego."[27] It recited; that in Virginia, and divers other places in America, there are colonies which were planted at the coſt, and ſettled by the people and by the authority, of this nation, which are and ought

ought to be ſubordinate to, and dependent upon, England; that they ever have been, and ought to be, ſubject to ſuch laws and regulations as are, or ſhall be, made by the parliament; that divers acts of rebellion have been committed by many perſons inhabiting Virginia, whereby they have moſt traiterouſly uſurped a power of government, and ſet up themſelves in oppoſition to this commonwealth. It therefore declared ſuch perſons "notorious robbers and traitors;"[48] and it forbad all perſons to have any connexion or confederacy with them. It prohibited all veſſels of foreign nations from going to, or trading in, any of the Engliſh plantations in America; empowering the ſhips of the parliament to ſeize them. It authoriſed the council of ſtate to ſend a fleet thither, and to grant commiſſions to proper perſons, to enforce all ſuch to obedience as ſtood oppoſed to the authority of the parliament; "any letters patents "to the contrary notwithſtanding." In purſuance of this ordinance, the ruling powers inſtantly appointed commiſſioners, and detached Sir George Ayſcue, with a powerful fleet and army, to reduce all their enemies to ſubmiſſion. And the inſtructions,[48] which were given them on that occaſion, are ſingularly remarkable. They were empowered, to uſe their endeavours, by the granting of pardons and other peaceful arts, to bring the coloniſts to the obedience of the ſtate of England; but, if theſe means ſhould prove ineffectual, then to employ every act of hoſtility; to ſet free ſuch ſervants and ſlaves of maſters, who oppoſe the preſent government, as will ſerve as ſoldiers to ſubdue them; to cauſe the acts of parliament to be executed, and juſtice to be adminiſtered, in the name of the commonwealth. Modern tranſactions have rendered extremely intereſting the ordinance and the inſtructions of a body of men ſo celebrated in Engliſh hiſtory, whoſe principles and atchievements have been deſcribed by the favourite daughter of liberty as "unexampled "in the annals of recorded time."[49] In addition to this panegyric, it may be truly ſaid of them, that they were too wiſe to make the declaratory ordinance before-mentioned without meaning, and too vigorous to claim rights that they were not ready to enforce by the ſword. The colonies, during thoſe days, had but too much cauſe to regret the truth of this obſervation.

The governor of Virginia continued nevertheleſs firmly attached to his ſovereign. Having hired a few Dutch ſhips, which were then trading there contrary to the royal inſtructions, and being well ſupported by the loyaliſts, he made a gallant reſiſtance. But it was impoſſible to contend long againſt a faction within, and a potent enemy without; and he was conſtrained to ſubmit to the good fortune of the commonwealth; procuring a general pardon for the colony, regardleſs of himſelf. "It ought to be remembered, to the honour of Virginia, ſays its "hiſtorian,[30] that it was the laſt which ſubmitted to the uſurpation." And thus was it compelled to obey that power, which the parliament had aſſerted, of binding the coloniſts by regulations in all caſes whatſoever.

The commons had no ſooner overcome all their adverſaries than they were themſelves ſubdued by Cromwell, in April, 1653. This extraordinary perſonage, the moſt ſingular character in hiſtory, poſſeſſed a genius, it ſhould ſeem, that, in whatever way he turned his views, expanded in proportion to his object, or correſpondent to his ſituation. Were he not the firſt, who beſt underſtood the nature and utility of plantations, he at leaſt was the firſt ruler of England who had the ſpirit and the power to carry his projects into effectual execution. While the beloved New-England was exempted, he rigorouſly enforced the ordinance of 1650 over the obnoxious Virginians. The reſtrictions on their trade, at a time when the ſtate could neither take off their commodities nor ſufficiently ſupply them with its own, and while Maſſachuſets enjoyed a monopoly againſt them, were productive of all the inconveniences which ſudden changes in policy always produce:[31] And they felt that reſentment which the hearts of the high-minded always feel when they obſerve contumely added to wrongs. Actuated partly by a ſenſe of their injuries, perhaps more by their loyalty, they ſeized the occaſion of the death of the protector's governor to throw off the tyranny of the uſurpation. They applied to Sir William Berkeley, who had lived privately on his eſtate, during the revolutions of the times, to reſume the government of the colony: But he did not conſent till they ſolemnly promiſed to venture their lives and fortunes with him for their king. Before they had heard of the death of Cromwell,

Cromwell, or of the anarchy that enſued in England, Charles II. was proclaimed, by them, king of England, Scotland, Ireland, and of Virginia. "And thus, ſays their hiſtorian,[32] his majeſty was actually king "in that colony before he was ſo in England." The Reſtoration ſoon after enſued, and fortunately prevented that chaſtiſement which the ruling powers had the ability, and probably would have had the inclination, to inflict. Yet the Virginians were not ſoon gratified with tidings of that pleaſing event; though, in the mean time, "they did not arrogate, "if we may believe Sir William Berkeley,[33] any power farther than the "miſerable diſtractions of England forced them to. For, when God "ſhall be pleaſed, in his mercy, to diſſipate the unnatural diviſions of "their native country, they will immediately return to their profeſſed "obedience." Thus acting with the becoming ſpirit of Engliſhmen, without the leaſt tincture of independence.

Originally ſettled by men only, who, for years, could hardly procure "wives, it was a long time, ſays their hiſtorian,[34] before Virginia ſaw a "race of Engliſh born on the ſpot." But, after the difficulties incident to the ſettlement of colonies were in ſome meaſure ſurmounted, and the voyage thither had been ſhortened by the improvement of navigation, and rendered more familiar by uſe, whole families tranſported themſelves thither. When the inſtructions of Charles I. gave large tracts of land to individuals, men of conſideration and wealth, rouſed by religion, or ambition, or caprice, removed thither; and the population of that colony had increaſed to about twenty thouſand ſouls at the commencement of the civil wars. The coloniſts, enjoying plenty of good land, and ſubſiſting with eaſe, naturally increaſed abundantly. And the cavaliers reſorting thither, during the diſtreſſes of thoſe times, Virginia contained about thirty thouſand perſons at the epoch of the Reſtoration.[35]

AUTHORITIES

AUTHORITIES AND NOTES.

[1] The following authentic paper, which contains a variety of intereſting particulars, illuſtrates the principles of thoſe days, and exhibits recent tranſactions in a very ſtriking light. — From Rym. Fœd. 18 vol. p. 72-4.

" *A proclamation for ſettling the plantation of Virginia.*

1625. 1 An. Car. I. } Whereas the colony of Virginia, planted by the hands of our moſt dear father, of bleſſed memory, for the propagation of the Chriſtian religion, the increaſe of trade, and the enlarging of his royal empire, hath not hitherto proſpered ſo happily as was hoped and deſired; a great occaſion whereof his late majeſty conceived to be, for that the government of that colony was committed to the company of Virginia, incorporated of a multitude of perſons of ſeveral diſpoſitions, amongſt whom the affairs of greateſt moment were and muſt be ruled by the greateſt number of votes and voices; and therefore his late majeſty, out of his great wiſdom and depth of judgement, did deſire to reſume that popular government; and, accordingly, the letters patent of that incorporation were, by his highneſs's direction, in a legal courſe queſtioned, and thereupon judicially repealed, and adjudged to be void: Wherein his majeſty's aim was only to reduce that government into ſuch a right courſe as might beſt agree with that form which was held in the reſt of his royal monarchy, and was not intended by him to take away or impeach the particular intereſts of any private planter or adventurer, nor to alter the ſame otherwiſe than ſhall be of neceſſity for the good of the public. And whereas we continue the like care of thoſe colonies and plantations as our late dear father did, and upon deliberate advice and conſideration, are of the ſame judgement as our ſaid father was for the government of that colony of Virginia. Now, leſt the apprehenſion of former perſonal differences, which have heretofore happened, (the reviving and continuing whereof we utterly diſallow and ſtrictly forbid,) might diſtract the minds of the planters and adventurers, or the opinion

opinion that we would neglect thoſe plantations might diſcourage men to go or ſend thither, and ſo hinder the perfecting of that work, wherein we hold the honour of our dear father, deceaſed, and our own honour to be deeply engaged; we have thought fit to declare, and by our royal proclamation to publiſh, our own judgement and reſolution in theſe things; which, by God's aſſiſtance, we purpoſe conſtantly to purſue, and therefore we do, by theſe preſents, publiſh and declare to all our loving ſubjects, and to the whole world, that we hold thoſe territories of Virginia and the Somer-iſlands, as alſo that of New-England, where our colonies are already planted, and within the limits and bounds whereof our late dear father, by his letters patent, under the great ſeal of England, remaining on record, hath given leave and liberty to his ſubjects to plant and inhabit, to be a part of our royal empire deſcended upon us: And that we hold ourſelf as well bound, by our royal office, to protect, maintain, and ſupport, the ſame, and are ſo reſolved to do, as any other part of our dominions; and that our full reſolution is, that there may be one uniform courſe of government in and through all our whole monarchy, that the government of the colony of Virginia ſhall immediately depend upon ourſelf, and not be committed to any company, or corporation; to whom it may be proper to truſt matters of trade and commerce, but cannot be fit or ſafe to communicate the ordering of ſtate-affairs, be they of never ſo mean conſequence; and that therefore we have determined, that our commiſſioners for thoſe affairs ſhall proceed according to the tenor of our commiſſion directed unto them: Nevertheleſs we do hereby declare, that we are reſolved, with as much convenient expedition as our affairs of greater importance will give leave, to eſtabliſh a council, conſiſting of a few perſons of underſtanding and quality, to whom we will give truſt for the immediate care of the affairs of that colony, and who ſhall be anſwerable to us for their proceeding, and, in matters of greater moment, ſhall be ſubordinate and attendant unto our privy-council here: And that we will alſo eſtabliſh another council to be reſident in Virginia, who ſhall be ſubordinate to our council here for that colony: And that at our own charge we will maintain thoſe public officers and miniſters, and that ſtrength of men, munition, and fortifications,

tions, as ſhall be fit and neceſſary for the defence of that plantation; and will, by any courſe that ſhall be deſired of us, ſettle and aſſure the particular rights and intereſts of every planter and adventurer in any of thoſe territories, which ſhall deſire the ſame, to give them full ſatisfaction for their quiet and aſſured enjoying thereof: — And, laſtly, whereas it is agreed, on all ſides, that the tobacco of thoſe plantations and the Somer-iſlands (which is the only preſent means of their ſubſiſting) cannot be managed for the good of the plantations unleſs it be brought into one hand, whereby the foreign tobacco may be carefully kept out, and the tobacco of thoſe plantations may yield a certain and ready price to the owners thereof, we do hereby declare, that, to avoid all differences and contrarieties in opinions, which will hardly be reconciled between the planters and adventurers themſelves, we are reſolved to take the ſame into our own hands, and, by our ſervants, or agents, for us to give full prices to the planters and adventurers for the ſame, as may give them reaſonable ſatisfaction and encouragement, but of the manner thereof we will determine hereafter at better leiſure: And, in the mean time, becauſe of the importation and uſe of foreign tobacco, which is not of the growth of thoſe plantations, or of one them, will viſibly and aſſuredly undermine and deſtroy thoſe plantations, by taking away the means of their ſubſiſtence, — we do hereby ſtrictly charge and command, that our late proclamation, bearing date the ninth day of April laſt, intitled, "a "proclamation touching tobacco," ſhall, in all points and parts thereof, be duly and ſtrictly obſerved, upon pain of our high diſpleaſure, and ſuch farther penalty and puniſhment as by the ſaid proclamation are to be inflicted upon the offenders. And we do hereby adviſe all our loving ſubjects, and all others whom it may concern, not to adventure the breach of our royal commandment in any of the premiſes, we being fully reſolved, upon no importunity or interceſſion whatſoever, to releaſe or remit the deſerved puniſhment of ſuch as ſhall dare to offend againſt the ſame, ſeeing we hold not ourſelf only, but our people intereſted therein. Given at our court, at Whitehall, the 13th of May. — By the king himſelf."

[2] The

[2] The ſtory of tobacco would contain almoſt the whole politics of the ſouthern colonies during that age. Charles I. holding it to be a matter of great conſequence to him, and to the honour of his crown, not to deſert or to neglect thoſe colonies, whereof the foundation had been ſo happily laid by his father, in April, 1625, iſſued a proclamation, enforcing that of his predeceſſor in the foregoing March. — Rym. Fœd. 18 v. p. 19. — Conſidering the plantations as only in their infancy, as having yet no other commodity, he empowered certain perſons, in January, 1627, to ſeize all foreign tobacco, and to contract for all of the plantations; giving this additional reaſon, that the colonies will be utterly deſtroyed if any other be allowed. — The commiſſion is in Rym. Fœd. 18 v. p. 831. — Yet, obſerving, in the ſubſequent February, that the deſire of taking tobacco ſtill increaſed notwithſtanding every oppoſition, that his ſubjects preferred the Spaniſh, and being willing to give way to the infirmities of his people, he allowed the importation of 50,000 lb. of foreign tobacco into the port of London; he prohibited the growth of it in England or in Ireland: And he threatened all with the ſtar-chamber who diſobeyed his proclamation. — Ib. 848. — He ſoon after iſſued an order for ſealing all colonial tobacco. — Ib. 886. — In Auguſt, 1627, he publiſhed a proclamation for the diſcouragement of it; commanding, that none ſhall be imported without licence, and even then to be delivered to his commiſſioners, that all planted in England ſhall be plucked up. — Ib. 920. — An ordinance was promulgated in January, 1631; commanding, that none ſhall be planted in England, that no foreign tobacco ſhall be imported; that none ſhall be brought from the colonies, but only into the port of London. — Ib. 19 v. p. 235. — In October, 1633, a proclamation was publiſhed, "for preventing the abuſes growing by the unordered retailing of tobacco." — Ib. 474. — A new edict was ſoon after iſſued for preventing the abuſive vending of that merchandiſe, and prohibiting the growth of it in the king's dominions. — Ib. 522-53.

[3] The commiſſion and inſtructions are in the record in the Plantation-Office, titled Virginia, vol. 1. p. 248-57.

[4] The proclamation before inſerted.

[5] Commons Journ. IV. p. 819-25-830-1. — [6] Ib. 863. — [7] Ib. during that ſeſſion. — [8] Ib. 874-84-6-890-8.

[9] The ſeveral charters, of Maſſachuſets in 1629 and 1692, of Maryland in 1632, of Connecticut and Rhode-Iſland in 1662-3, of Pennſylvania in 1681; all contain an expreſs clauſe, reſerving this important right, in almoſt the very words of the reſolves of the commons; who had only contended for the common law and common right of the ſubject. The charters were merely declaratory of both: Nor could the king, by his grant, reſtrain Engliſhmen from fiſhing whither gain directed their adventures. It is pleaſing to remark; that the wiſdom of Elizabeth ſpontaneouſly reſerved that to all her ſubjects, which the folly of James refuſed to their prayers. — See the patent, granted by her to Raleigh, in Hackluyt, I v. p. 725-8.

The hiſtory of this clauſe in the charter of Maryland, which has been ſo fully given, decides a long-conteſted point in the juriſprudence of that province. Whether the reſervation of the right of fiſhing related to the ſubjects of England and Ireland only, according to the expreſs words of it, or to the inhabitants of Maryland alſo, has been long, and ſometimes forcibly debated. The latter, adjudging the diſpute in their own favour, have at all times exerciſed the privilege, though not always without oppoſition. By the common law they may aſſuredly fiſh in all navigable creeks and rivers: But, a freedom to tread the ſoil of the freehold, or to appropriate any of the productions of it, requires ſome ſpecial authority. Such is the law of Virginia: All may fiſh in its numerous bays and rivers; but, none can land on their banks without the conſent of the owners. The ancient law of Maſſachuſets, though contradictory to the expreſs reſervation of the charter, gave the fiſhermen a right to uſe any harbour, to occupy the adjoining ſhores for curing their fiſh, to take timber and fire-wood; "paying the town, or perſons who are the pro-" prietors, for the ſame." — New-Eng. laws abridged, p. 40. — Thus hiſtory becomes ſubſervient to the purpoſes of law as a ſcience.

[10] Mod. Univ. Hiſt. 41 v. p. 340; Record, titled Virginia, v. 1. p. 204-8. — [11] Com. Journ. 1 v. p. 914-18. — [12] Ib. 926-32, — [13] Ib. 919-20. — [14] Rym. Fœd. 18 v. p. 980.

[15] Preſent

[15] Preſent State of Virg. p. 47-50; Brit. Emp. Am. 1 v. p. 230.

[15] Rym. Fœd. 18 v. p. 920.

[16] The following paper is ſubjoined; becauſe it ſhews equally the ſtate of Virginia, during thoſe days, and the temper of the adminiſtration of Charles I. — From Virg. Ent. 1 v. p. 211.

A letter from the committee of colonies to the governor and council of Virginia.

After our hearty commendations. We have thought fit to let you know, that his majeſty, of his royal favour, and for the better encouragement of the planters there, doth let you know, that 'tis not intended, that intereſts, which men have ſettled when you were a corporation, ſhould be impeached, that for the preſent they may enjoy their eſtates with the ſame freedom and privilege as they did before the recalling of their patents; to which purpoſe alſo, in purſuance of his majeſty's gracious intention, we do hereby authoriſe you to diſpoſe of ſuch proportions of lands to all thoſe planters, being freemen, as you had power to do, before the year 1625. — Whitehall, 22 July, 1634.

To our loving friends, the governor and council in Virginia.

Mancheſter. Kelley. E. Newburgh. T. Coventry. F. Cottington. T. Germin. F. Windebank.

[17] Brit. Emp. in Am. 1 v. p. 240. — [18] Record, Virgin. 1 v. p. 212. — [19] Brit. Emp. in Amer. 1 v. p. 240.

[20] The annexed extracts of the inſtructions given to Sir William Berkeley, at the ſame time that they contain a variety of particulars, which demonſtrate the condition of the colony at the commencement of the civil wars, juſtify the foregoing obſervations.

1ſt. That God may be ſerved according to the form eſtabliſhed in the church of England; a parſonage-houſe and a ſtipend to be allowed to the miniſter by every congregation: And no innovation in matters of religion to be ſuffered. 2dly. The oaths of ſupremacy and allegiance to be ad-

miniſtered to reſidents; *and the refuſers of them to be ſent home.* 3dly. To be vigilant to prevent delay or corruption in the adminiſtration of juſtice. 4thly. May eſtabliſh courts of juſtice to hold plea of the value of 10l. or under; and for the puniſhment of ſuch crimes as the council ſhould think fit. 5thly. The governor may appoint magiſtrates for the execution of acts of aſſembly and of the council, and all officers under the degree of a counſellor. 6thly. All counſellors ſhall be exempted from public charges. 7thly. The governor may make probate of wills and grant letters of adminiſtration, as heretofore uſed. 8thly. "New-comers" to be exempted from public burdens for one year; to grant 50 acres of land to every perſon tranſported thither, ſince the year 1625, according to the orders of the late company, and ſince allowed by his majeſty: And to convey, to others, lands, formerly granted, and deſerted for many years. 9thly. To oblige every one poſſeſſing 500 acres of land to build a brick houſe: And, with the conſent of the aſſembly, may remove the capital to a more healthy place, ſtill calling it James-Town. 10thly. To oblige the planters to incloſe their orchards and their fields; to allow no corn to be ſent out of the country without leave of the governor. 11thly. Whereas the ſtaple of tobacco is ſtill falling in its value, the planting of it to be ſtinted to a far leſs proportion than was made the former year: And becauſe of the great debts due by the planters, occaſioned by the exceſſive rates of commodities, that the courſe formerly commanded by his majeſty, for regulating the debts of the colony, ſhall be duly obſerved. 12thly. That the governor uſe his beſt endeavour to cauſe the people to apply to the raiſing of hemp, flax, rape-ſeed, madder, pitch, tar, turpentine, vines, mulberry-trees, and ſilk-worms. 13thly. That merchants ſhall not be allowed to bring in exceſſive quantities of liquors, but neceſſary commodities; nor ſhall they be reſtrained, but may make their own bargain for tobacco. 14thly. Whereas many ſhips, laden with tobacco and other merchandiſes, have thence carried the ſame directly to foreign countries, whereby his majeſty loſeth the duties thereupon due; there being nothing anſwered in Virginia; you ſhall be very careful that no veſſel depart thence loaded with thoſe commodities, before bond, with ſufficient ſureties, be taken to his majeſty's uſe, to bring the ſame into his majeſty's

majeſty's dominions, and to carry a lading from thence; that the ſtaple of thoſe commodities may be made here; whereby his majeſty, after ſo great an expence upon that plantation, and ſo many of his ſubjects tranſported thither, may not be defrauded of what is juſtly due for cuſtoms on the goods: The bonds to be tranſmitted, that delinquents may be proceeded againſt. 15thly. To forbid all trade with any foreign veſſels, except upon neceſſity: The governor ſhall take good bonds of the owners of tobacco, that it be brought to the port of London, there to pay ſuch duties as are due. — See the Inſtructions in Record, Virginia, vol. 1, p. 218.

[21] Preſent State of Virg. p. 47. — [22] Ib. 52. — [23] Brit. Emp. in Am. 1 v. p. 240-2.

[24] The following letter from Charles I. to the aſſembly of Virginia eſtabliſhes ſeveral important facts, and ſhews how much the mind of that prince had been ſoftened by adverſity. — From Virg. Ent. v. 1. p. 237.

C. R.

Truſty and well-beloved, we greet you well. Whereas we have received a petition from you, our governor, council, and burgeſſes of the grand aſſembly in Virginia, together with a declaration and proteſtation, of the firſt of April, againſt a petition preſented in your names to our houſe of commons in this our kingdom, for reſtoring of the letters patent for the incorporation of the late treaſurer and council, contrary to our intent and meaning, and againſt all ſuch as ſhall go about to alienate you from our immediate protection. And whereas you deſire, by your petition, that we ſhould confirm this your declaration and proteſtation under our royal ſignet, and tranſmit the ſame to that our colony; theſe are to ſignify, that your acknowledgements of our great bounty and favours towards you, and your ſo earneſt deſire to continue under our immediate protection, are very acceptable to us; and that, as we had not before the leaſt intention to conſent to the introduction of any company over that our colony, ſo we are by it much confirmed in our former reſolutions, as thinking it unfit to change a form of government wherein (beſides many other reaſons given and to be given) our ſubjects there (having had ſo long experience of it) receive ſo much content and

ſatisfaction.

ſatisfaction. And this our approbation of your petition and proteſtation we have thought fit to tranſmit unto you under our royal ſignet. — Given at our court at York, the 5th day of July, 1642.

To our truſty and well-beloved our governor, council, and burgeſſes, of the grand aſſembly of Virginia.

[25] Brit. Emp. in Am. 1 v. p. 242. Hume's Hiſt. of Engl. 4to. 2 v. p. 35. — [26] Record, Virgin. 1 v. p. 238. — [27] Scobel's Acts, 1650, ch. 28. — [28] Theſe inſtructions are in Thurloe's State Pap. 1 v. p. 197-8. — [29] Macaulay's Hiſt. of England, 5 v. p. 91. — [30] Hume's Hiſt. of Engl. 4to. 2 v. p. 35. Brit. Emp. in Am. 1 v. p. 242,3. Preſent State of Virgin. p. 54. — [31] Ib. 55,6. — [32] Brit. Emp. in Am. 1 v. p. 244,5. — [33] See his letter, dated in Auguſt, 1660, to Stuyveſant, the governor of New-Netherlands, in Smith's Hiſt. of N. York, p. 10. — [34] Brit. Emp. in Am. 1 v. p. 242-89. — [35] Preſent State, 2 pt. 50.

The following extract of a letter, dated at Barbadoes, 30 March, 1655, from Edward Winſlow, one of the protector's commiſſioners in the famous Weſt-Indian expedition, to ſecretary Thurloe, demonſtrates as well the temper with which Cromwell and his aſſociates ruled the colonies during the ſeaſon of their triumph, as ſupports the reaſonings in the text. — From a collection of papers by Mr. Hutchinſon, p. 269.

" The general hath ſettled the militia of the iſland, and given commiſſions to four regiments of horſe and four of foot, and made the governor his lieutenant-general. I hope it will conduce to the public weal of the place. We have made bold to refer our commiſſioners to make uſe of their exciſe-office, whereof the governor had a 3d, which 3d we ſtill leave him to poſſeſs; but, whereas they call upon their articles, I tell them they have broken that article; for, whereas they were to pay the public debts of the iſland therewith, they have received all theſe two years profits paſt, and we none at all; and now we ſhall reap the crop of this third year, but with a great deal of indignation to many. We aſk them how long his highneſs ſhall wait their pleaſure to receive his royalties."

CHAP.

CHAP. VI.

Various colonies ſettled around Maſſachuſets-Bay. — An aſſylum for ſilenced miniſters projected. — A grant of lands obtained from the council of Plymouth. — Confirmed by Charles I. *— Charter of Maſſachuſets. — Remarks. — A colony formed at Salem. — Its church eſtabliſhed. — Obſervations. — Church of England ſuppreſſed. — Its principal members expelled. — Diſtreſſes of the ſettlement. — The perſecuted apply to the governor and company for redreſs. — Reflections.*

WHEN the Browniſts neſtled at Cape Cod they found a conſiderable part of the neighbouring country paying prompt obedience to the virtues and talents of Maſſaſoet, a renowned ſachem of thoſe days, who has acquired the glory of conferring his name on an arm of the ocean, which ſtretched far into his dominions. Of the territory around Maſſachuſets-Bay various grants had been made, at different times, by the council of Plymouth, which were afterwards either derided or diſregarded.[1] And upon its ſhores ſeveral inconſiderable ſettlements were made, with a ſucceſs in proportion to the views or imbecillity of the planters.

Actuated partly by the reſtleſs ſpirit of the times, but more by religious motives, a little colony emigrated from the Weſt of England, under the conduct of Conant, in the year 1626; and ſettled on that part of the American coaſt which afterwards acquired the name of Salem. But, encountering ſoon all the diſaſters incident to the formation of plantations, his followers became miſerable in a ſituation where they found only an inhoſpitable wilderneſs; and, when they recollected the pleaſures of their youth, they reſolved to return to their native land. Meanwhile, White, a miniſter of Dorcheſter, had projected an aſſylum for the ſilenced nonconformiſt clergy, who then thought themſelves perſecuted, becauſe they were not allowed to perſecute. And he exhorted his countrymen by no means to deſert their ſettlement: Promiſing to ſend them ſpeedily a patent, neceſſaries, and friends. Relying on theſe aſſurances, the emigrants

determined

determined to ſuffer patiently all the miſeries which appeared lately ſo intolerable, becauſe they were unattended with hope.[2]

In proſecution of theſe views, that gentleman entered into a treaty with the council of Plymouth for a grant of part of New-England; which was ſoon concluded, becauſe the intereſt of both concurred. In March 1627-8, that corporation conveyed the territory, at the bottom of Maſſachuſets-Bay, ſituated between the rivers Merrimack on the North, and Charles on the South, to Sir Henry Roſewell[3] and others, for ever, with various privileges and powers. Planters and ſervants were ſoon after diſpatched under the command of Endicot, whoſe deep enthuſiaſm engaged him zealouſly to promote the ſucceſs of an enterpriſe which was to gratify the favourite paſſions of every one. And, in September, 1628, he laid the foundation of Salem, the firſt permanent town of Maſſachuſets:[4] Thus marking the extent of their fanaticiſm by the name which they gave to their ſettlement.

But the patentees were ſoon convinced, that to tranſport a colony to ſo diſtant a country, and to maintain it for years, without return of profit, was a project far beyond their abilities: And they applied to ſeveral perſons of greater fortune and conſideration to become partners in their adventure, with a ſucceſs equal to the prudence of the meaſure. Yet, judging from the experience of former colonial companies, theſe men doubted partly the validity of the late conveyance, but more the authority given by it to rule the intended plantation. And they inſiſted therefore, not only that a charter ſhould be obtained from the crown, to confirm the grant of the council of Plymouth and to authoriſe them to govern the coloniſts, but that their names ſhould be inſerted in it, and their affairs tranſacted at London.[5] With all theſe intentions a patent was accordingly applied for; and obtained, by the ſolicitation of Lord Dorcheſter, from Charles I. in March, 1628-9.[6] And, whether we reflect, that this is the only charter which Maſſachuſets poſſeſſed prior to the Revolution, which contained its moſt ancient privileges; that on this was moſt dexterouſly eſtabliſhed not only the original government of that colony but independence itſelf: A minute diſcuſſion of it muſt appear equally neceſſary and intereſting.

This

This patent recited the grant of American territory to the council of Plymouth, in 1620, and its ſubſequent ſale of a ſmall portion thereof before-mentioned. It re-granted to Sir Henry Roſewell and others that part of New-England which extendeth between the rivers Merrimack and Charles, and alſo thoſe lands ſituated within the ſpace of three Engliſh miles of the ſouth-ſide of Charles-River, and of the northern margin of Merrimack, or to the ſouthward of the moſt ſouthern part of the former, or to the northward of every part of the other, for its length; and, for its breadth, from the Atlantic to the South-Sea: To be holden by them, their heirs, and aſſigns, in free and common ſoccage, as of the manor of Eaſt-Greenwich; paying in lieu of all ſervices one-fifth of the gold and ſilver that ſhould be found. The neceſſity "of good govern-"ment, for the proſperous ſucceſs of the intended emigration," being apparent, the grantees were incorporated by the name of "the governor "and company of Maſſachuſets-Bay, in New-England." The whole executive power of the corporation was inveſted in a governor, a deputy, and eighteen aſſiſtants: And their general duty was, "for the beſt diſ-"poſing and ordering of the lands granted, of the affairs of the planta-"tion, of the government of the people there." The governor, and ſeven or more aſſiſtants, were authoriſed to meet in monthly-courts, "for "diſpatching ſuch buſineſſes as concerned the company or ſettlement." But, the legiſlative power of the corporation was inveſted in "a more "ſolemn aſſembly:" And this body was to be compoſed of the governor, the deputy, the aſſiſtants, and of the whole freemen of the company in perſon. It was directed to be held "every laſt Wedneſday in the four "terms;" and theſe meetings were named "the four great and general courts." It was empowered to make ordinances for the good of the body politic, for the government of the plantation and its inhabitants; "ſo "that they ſhould not be repugnant to the laws of England." It was authoriſed to elect freemen, a governor, a deputy, aſſiſtants, and other neceſſary officers. The governor and company were enabled to tranſport to New-England "all ſuch of the ſubjects of that prince as ſhall be willing to "accompany them, and ſuch ſtrangers as will become ſubjects and live "under his allegiance;" yet, upon this proviſo, "that none of the ſaid

" perſons be ſuch as ſhall be eſpecially reſtrained." And the emigrants and their poſterity were declared " to be natural-born ſubjects, and en-" titled to the immunities of Engliſhmen within every other dominion " of the crown, as if born within the realm." They were empowered to carry thither warlike ſtores and merchandiſes, without paying any cuſtom for the ſpace of ſeven years: And, as a farther encouragement, they were exempted from the payment of taxes in New-England during the ſame term, and from any duty on commodities imported to England or any dominion of the crown, or exported from them, for one-and-twenty years after the expiration of the former term of exemption, except five in the hundred of the value for cuſtom. " That the colony, which was " to be planted, might be ſo religiouſly and civilly governed, as the good " life and orderly converſation of the inhabitants might invite the na-" tives to the knowledge of the Chriſtian faith; which, in the royal in-" tention, and in the adventurers free profeſſion, was the principal end " of the plantation;" power was conferred on the general-court and its ſucceſſors, to eſtabliſh ordinances and inſtructions, which ſhould not be contrary to the laws of the realm, for ſettling forms of government for the coloniſts; for appointing ſuch lawful fines, impriſonments, or other lawful correction, according to the courſe of other corporations in this realm; for naming neceſſary officers. And theſe ordinances, being publiſhed under the ſeal of the company, were to be duly obſerved and executed within the plantation. The chief commander and other magiſtrates, who ſhould from time to time be employed, by the governor and company, in the government of the colony and its inhabitants, were inveſted with abſolute power to puniſh or pardon, to rule the coloniſts or emigrants going thither, according to the above-mentioned ordinances and inſtructions. They were authoriſed to defend themſelves againſt invaders: But, ſhould they do any injury to foreign ſtates, or to other ſubjects, without making proper reparation, a right was given to the injured to proſecute them with every act of hoſtility. Agreeably to the repeated reſolutions of the commons, there was reſerved, to the other ſubjects of the crown, a right of free-fiſhing, with the neceſſary incidents of

of drying fish on the shores, and of taking timber, upon the coasts of New-England.

Such then is the substance of a charter, which the enthusiasm of those days considered as sacred, because supposed to be derived from the providence of heaven; which has been often appealed to, as so comprehensive and important; and from which such considerable privileges have been at all times claimed and exercised. Yet, Massachusets assuredly was not erected into a province of the English empire, to be regularly governed by the acts of a provincial legislature. Nothing more was prayed for, and nothing more was granted, than the establishment of a body politic, with special authority, "for disposing the lands of the plantation, and "for the government of the people there." The design of the grant was to confer the same immunities that had been given originally to the council of Plymouth: The intention of the grantees was to accept of the same powers that are usually granted to corporations within the realm.[7]

The clause, providing with a cautious spirit, that the ordinances of the company should not be repugnant to the laws of England, though uniformly inserted in all the colonial charters, was merely declaratory of the ancient jurisprudence of the state: And it was equally unnecessary as would be a similar provision in the constitution of any other corporation within the kingdom; being attended with little practical good, and giving rise to the various constructions of interest or of faction. Yet it contained a proposition of policy extremely simple and intelligible. The common law asserted, that no change of time or place shall make any alteration in the nature of the allegiance of the subject; that no inferior person or community shall do any act inconsistent with the nature of their inferiority; that no subordinate legislature shall prescribe any rule of action repugnant to the spirit of its subordination, or contradictory to the acts of the supreme legislative power; that appeals may be made from the courts of the dependent dominion to the judicatories of the sovereign state, because they are equally the right of the individual and the nation: And the inference drawn from these just premises, by the clause before-mentioned, was plainly this; that, though power is now conferred to make regulations suitable and necessary for your distant co-

lony, you ſhall make no ordinances inconſiſtent with the connexion between the territory and the country of which it is a member. The junction of England and Scotland, once ſeparate and independent nations, is formed by ſtatute-law; the coalition of Great-Britain and her dependencies is eſtabliſhed by common-law: And both are equally binding and equally effectual for knitting together the various regions of which the Britiſh empire is compoſed. The union of England and Scotland alone demonſtrates, that the laws of the two kingdoms may be extremely different, and even contradictory, yet the principles of their junction remain entire and unimpeached. So a colony may adopt new cuſtoms; may abrogate that part of the common-law which is unſuitable to its new ſituation; may repeal the ſtatute-law wherein it is inapplicable to its condition: All it may change, except only the principles of its coalition with the ſtate, or the ſpecial regulations of the ſupreme power or great body politic of the empire, with regard to it. Were ſubordinate legiſlatures of whatever denomination to make ordinances, altering the nature of the allegiance of the territorial inhabitants, making itſelf leſs inferior than formerly, reſtraining appeals, or abrogating the principles of the connexion with the nation; all ſuch attempts muſt be conſequently either conſtrued as void or deemed aſſertions of independence. Such ordinances have, in fact, been paſſed. And an act of the ſovereign legiſlature, in order to vindicate its own authority, declared ſoon after the Revolution, when the extent of its own powers were fully underſtood: That all by-laws and cuſtoms, which ſhall be in force in any of the plantations, repugnant to any law made or to be made in this kingdom, with regard to them, ſhall be utterly void. This famous ſtatute, therefore, is merely declaratory of the common-law principles before-mentioned.

It was declared, indeed, that the coloniſts and their children ſhould be entitled to every privilege, as if they were born within the kingdom; but, as no grant of a king of England could diveſt them of the character of ſubjects, ſo this conveyed to them no other rights than the common-law had aſſured to every Engliſhman. Had they emigrated with the conſent of the ſtate, but without a charter, they would have been fully entitled to enjoy their former immunities, as completely as they could

exerciſe

exerciſe them where they freely placed themſelves. Far from conferring, therefore, new privileges on the emigrants, their patent was really reſtrictive of their ancient rights. They were excluded from the legiſlative power, and were ſubjected to the ordinances of a corporation within the realm, becauſe diſtance excluded them from a general-court, where perſonal preſence was neceſſary. The company, as well as the coloniſts, was exempted from the payment of taxes within New-England for a limited time: But if, according to the deciſion of common-ſenſe, every exception affirms the general principle, the right of impoſing duties without their conſent was reſerved. Yet it was not aſſuredly the pretenſions of the royal prerogative which were ſaved. For the petition of right had juſt then irrevocably decided, that no tallages ſhall be levied on the ſubject without the general aſſent by act of parliament: It was therefore the juſt power of the Engliſh legiſlature. The enjoyment of liberty of conſcience, the free worſhip of the Supreme Being in the manner moſt agreeable to themſelves, were the great objects of the coloniſts, which they often declared was the principal end of their emigration. Nevertheleſs, though their hiſtorians aſſert the contrary, the charter did not grant ſpontaneouſly to them a freedom, which had been denied to the ſolicitations of the Browniſts: And it is extremely probable that ſo eſſential an omiſſion aroſe not from accident but deſign. In conformity to his intention of eſtabliſhing the church of England in the plantations, James had refuſed to grant to that ſect the privilege of exerciſing its own peculiar modes, though ſolicited by the powerful intereſt of the Virginian company. His ſucceſſor adopted and purſued the ſame policy under the direction of Laud, "who, we are aſſured, kept a jealous eye over New-"England."[9] And this reaſoning is confirmed by the preſent patent; which required, with peculiar caution, "that the oath of ſupremacy "ſhall be adminiſtered to every one who ſhall paſs to the colony to inha-"bit there."[10]

When this charter, ſays Neal," was, by the agents of Maſſachuſets, laid before ſome of the beſt politicians and lawyers, after the Revolution, Somers, Holt, Treby, Ward, they thus remarked its defects: That, being originally granted to a great company reſident in England, it was wholly

wholly inapplicable to the circumſtances of a diſtant colony, becauſe it gave the body politic no more juriſdiction than had every other corporation within the kingdom; that no authority was conferred to call ſpecial aſſemblies, wherein ſhould appear the delegates of the people, becauſe repreſentation was expreſſly excluded by the clauſe, requiring the preſence of the freemen in the general-courts; that no permiſſion was given to raiſe money either on the coloniſts or on ſtrangers trading thither, becauſe the king could not give an authority which he did not himſelf poſſeſs; that it did not enable the legiſlative-body to erect various judicatories, either of admiralty, of probate of wills, or of chancery, becauſe that required ſuch a ſpecial grant as did not here exiſt.

Thus defective and inapplicable, the patent was no ſooner obtained, than the governor and company began to execute, with great ardour, the chief views of the grantees. A general court, compoſed as the charter required, was regularly convened, in May, 1629. It choſe Cradock chief governor and other officers of the corporation. In order to raiſe a fund to ſupply the expected charges, it was reſolved, that every one ſubſcribing fifty pounds ſhould be entitled to two hundred acres of land, as the firſt dividend. A freſh embarkation being at the ſame time reſolved on, ſix veſſels were provided to tranſport it, with every neceſſary, to New-England. Endicot was now confirmed governor within the colony, and was honoured with new inſtructions. It would have been extraordinary had the intereſts of religion been forgotten by men ſo extremely zealous. Four miniſters of approved orthodoxy were accepted by the general court, and proper encouragements were given them, that they might attend the emigration. Thus the governor and company acted, on that occaſion, as a mere corporation within the kingdom: And it is a ſtriking circumſtance, in the ſtory of Maſſachuſets, that the general court, which then aſſembled, will be found to be the only one that proceeded in conformity to the charter, or agreeably to the principles of Engliſh law.

The fleet, which ſailed from the Iſle of Wight in May, 1629, carrying about two hundred perſons, with abundance of all things requiſite to form a ſettlement, arrived at Cape Anne, after a proſperous voyage, in

in the ſubſequent June. They found Salem to conſiſt of eight miſerable hovels, and the whole colony to contain only one hundred planters, who yet had been unable to provide themſelves with food: And both parties equally rejoiced; the old coloniſts, that important ſupplies were arrived; the "new-comers," that they met aſſociates in the ſame cauſe, on a coaſt woody and inhoſpitable. Diſſatisfied, however, with a ſituation which ſuffered prodigiouſly when compared with the beautiful iſland from which they had departed, about one hundred perſons ſoon removed farther into the wilderneſs, and laid the foundation of Charles-Town."

Religion, being the principal incentive to their emigration, naturally became the chief object of their care. Their zeal therefore ſoon appointed a day for the eſtabliſhment of church order and diſcipline. Endicot, having in the mean-time correſponded with their neighbours of New-Plymouth, "found them right in their outward form of wor-"ſhip, becauſe they had adopted a mode extremely ſimilar to the re-"formed churches of France:" And their brethren of that colony were invited to be witneſſes of their conduct. Having declared their aſſent to a confeſſion of faith drawn up by one of the miniſters, the greater number, agreeably to the ſpirit of independence, ſigned an aſſociation, in Auguſt, 1629, which is extremely characteriſtic of them.[13] "We cove-"nant, ſaid they, with the Lord, and with one another, to walk toge-"ther in all his ways, according as he is pleaſed to reveal himſelf to us; "nor will we deal oppreſſingly with any wherein we are the Lord's "ſtewards." They immediately choſe paſtors and other eccleſiaſtical officers, who were ſeparated to their ſeveral functions by the impoſition of the hands of the brethren. A religious ſociety, or church, being thus formed, ſeveral perſons were received into it by giving teſtimony of their ſober converſations: And none was admitted to communion with them without giving ſatisfaction to the church concerning his faith and manners. But the mode how that ſhould be given was left to the arbitrary diſcretion of the elders, as particular caſes ſhould ariſe: Thus erecting in wilds, which freedom was to people and cultivate, that inquiſitorial power which had laid waſte the fruitfulleſt European plains.

It

It will be extremely difficult, if not impoſſible, to ſupport the legality of the aſſociation before-mentioned; except on principles of pure independence, or as a voluntary compact, which was obligatory on none but the aſſociators. The emigrants carrying with them thoſe laws of the realm which were ſuitable to their ſituation, ſo much of the juriſprudence of England inſtantly became that of the colony. According to the ancient common law, which hath been declared by ſtatute, there can be no provincial church eſtabliſhed, nor any eccleſiaſtical proceeding, without the conſent of the king, the ſupreme head.[14] Theſe ſalutary principles of policy were expreſſly enforced by their charter, with a caution which ſeemed to foreſee, though it could not prevent, what afterwards happened. Nor did they aſk the approbation of the governor and company in England, who were inveſted, as we have ſeen, with a legiſlative authority over them. Yet, by the covenant itſelf, they promiſed "to "carry themſelves in all lawful obedience to thoſe that are over them in "church or commonwealth." Thoſe emigrants were men, however, above all worldly ordinances. The laws of England, ſo juſtly celebrated by the panegyric of nations, they conſidered as not binding on them; becauſe inapplicable to ſo godly a people. And the Jewiſh ſyſtem of rules they almoſt literally adopted; becauſe more ſuitable to their condition. Men of diſcernment perceived with regret the ruling principle of Maſſachuſets for the firſt time diſcloſed. It verbally admitted the king to be ſupreme head of the church, and promiſed all lawful obedience to his power: But it aſked not his aſſent when the church was eſtabliſhed. And it would probably have deemed the royal interference as an invaſion of its chartered rights.

Of all compacts not ſtrictly legal, it is to be lamented as a misfortune, that what in the beginning is merely voluntary too ſoon becomes compulſory, when bigotry is accompanied with power. Among the firſt emigrants there were ſome perſons of a religion extremely different from that of the members of the before-mentioned ſociety; and they were perſons too of eſtates and conſequence, and of the number of the firſt patentees. Obſerving that the miniſters did not uſe the book of common-prayer, theſe men, with a laudable ſpirit of attachment to the

uſages

uſages of their fathers, eſtabliſhed a ſeparate meeting, according to the forms of the church of England. And this meaſure, it ſhould ſeem, was equally reaſonable as the former; perhaps more conſiſtent with the charter, and more agreeable to the conſtitutions of the ſtate. The ſocieties of the colony were founded on a principle of freedom and independence; which is always ſo reſpectable even when productive of inconvenience. It is only to be deplored, that their zealous members did not, according to the admirable temper of Chriſtianity, allow that liberty of choice and of action to others, which they had themſelves exerted. The governor, being nevertheleſs greatly alarmed, ſummoned before him the ſupporters of the church of England, to give an account of their proceedings: Thus conſidering nonconformity as a crime, which the civil magiſtrate ought to watch and to puniſh. They accuſed the miniſters, in their defence, of departing from the order of the ancient eſtabliſhment: Adding, "that they were Separatiſts, and would ſoon be Anabaptiſts; but, "as for themſelves, they would hold faſt to the forms of the church eſ- "tabliſhed by law." The miniſters denied the charge, and inſiſted; "that they did not ſeparate from the church of England, but only from "her diſorders; that, far from being Separatiſts or Anabaptiſts, they "had only come away from the common-prayer and ceremonies, becauſe "they judged the impoſition of theſe things to be ſinful corruptions of "the word of God." Theſe anſwers, ſo agreeable to the ſentiments of the majority, were generally approved of: And two of their accuſers, who were perſons of conſideration, on the pretence ſo common on ſuch occaſions, of their endeavouring to raiſe a mutiny among the people, were expelled and ſent to London. The expulſion of its chiefs inflicted a wound on the church of England, which it never recovered: And the liberal-minded exclaimed, that the ſame conduct has been invariably purſued at all times, and in every country; the perſecuted, when they acquire power, will always perſecute. With ſuch a church, and ſuch miniſters, Blackſtone, an epiſcopal clergyman, could never be induced to communicate: Giving, for a reaſon, what ought to have taught moderation to all; that, as he came from England, becauſe he did not like

the lord-biſhops, ſo he would not join with them, becauſe he could not be under the lord-brethren.[15]

During the firſt winter after their arrival, the emigrants encountered thoſe diſaſters which had uniformly afflicted the other coloniſts during the early years of their ſettlement.[16] About a hundred of them departed, lamenting that they did not live to ſee the riſing glories of the faithful. But the ſurvivors firmly ſuſtained every inconvenience, and braved every danger, becauſe they now exerciſed their peculiarities in peace, and enjoyed the pleaſure of inflicting on others thoſe ſeverities which they had formerly ſuffered themſelves.

When the perſons, who had been thus expelled, arrived in England, they naturally applied to the governor and company for reparation of their wrongs; but it appears not from their records that they ever received any redreſs. The inſolence of contempt was ſuperadded to the injuſtice of power. The letters, which thoſe gentlemen had written to their friends, were intercepted, and read publicly in the general-court, on the pretence, equally mean and unjuſt, "that they might poſſibly injure "the plantation."[17] Thus early was introduced into the politics of Maſſachuſets the diſhonourable practice of appropriating the communications of private friendſhip, wrongfully obtained, to the malevolent purpoſes of party: It then rooted in her ſyſtem, and in after-times produced abundantly.[18] The general-court was at that time too much occupied, in preparing for an important change, to attend to the firſt duty of all rulers; to give protection to the injured. This ſignal tranſaction, in all its circumſtances, exhibits to mankind, for their inſtruction, one of the moſt ſtriking examples, to be met with in hiſtory, of the groſſeſt invaſion of the rights of men, of the privileges of citizens, of the liberties of Engliſhmen.

AUTHORITIES

AUTHORITIES AND NOTES.

[1] See various grants in the old New-England Entries in the Plant. Office.

[2] Neal's N. Eng. 1 v. p. 136.

[3] In oppoſition to the pretenſions of the truly celebrated Sir Samuel Luke, it has been zealouſly contended by the partiſans of this knight, ſo famous in the ſtory of Maſſachuſets, that Sir Henry was aſſuredly the great prototype of the incomparable Sir Hudibras. — See the ſubject diſcuſſed in the Introduction to Grey's Hudibras, and the Supplement to Granger's Biography.

[4] Joſſelyn, 250. — [5] Neal, 1 v. p. 138.

[6] There is a copy of this patent in the old N. England Ent. in the Plant. Off. See Mauduit's Short View of the Charters, and Mr. Hutchinſon's Collection of Papers.

[7] The following paper demonſtrates what is aſſerted in the text, and is therefore ſubjoined; it evinces too, that what was ſo ſtrongly aſſerted, during the reign of Charles II. to prove that the charter was ſurreptitiouſly obtained, is unjuſt.

" *A copy of the docquet of the grant to Sir Henry Roſewell and others, taken out of the Privy-ſeal-office, at Whitehall.*" — From the N. Eng. Papers, bundle 4, p. 996.

" A grant and confirmation unto Sir Henry Roſewell, his partners, and their aſſociates, to their heirs and aſſigns for ever, of a part of America, called New-England, granted unto him by a charter from divers noblemen and others, to whom the ſame was granted by the late king James, with a tenure in ſoccage, and reſervation of one-third part of the gold and ſilver ore: Incorporating them by the name of the governor and company of the Maſſachuſets-Bay, in New-England, in America, with ſuch other privileges, for electing governors and officers here in England for the ſaid company; with ſuch other privileges and immunities as were originally granted to the ſaid noblemen and others, and are uſually allowed to corporations here in England. His majeſty's pleaſure, ſignified

by Sir Ralph Freemen, upon direction of the lord-keeper of the great-ſeal; ſubſcribed by Mr. Attorney-general; procured by the lord viſcount Dorcheſter; February, 1628. Memorandum. Their charter paſſed 4th March following."

In the ſame papers, bundle 5, p. 322, there is a ſketch, drawn by Mr. Blathwayt, ſtating "the clauſes in the charter, ſhewing, that it was "intended thereby that the corporation ſhould be reſident in England." And, indeed, the whole tenor of the patent, as well as the ſubſequent conduct of the corporation, evinces the truth of that important fact. But the following extract of an agreement, entered into at Cambridge, the 26th of Auguſt, 1629, between Salſtonſtal, Dudley, Winthrop, and other chief leaders of Maſſachuſets, demonſtrates that truth. — From a collection of papers, made by Mr. Hutchinſon, relative to the hiſtory of Maſſachuſets, p. 25-6.

"We ſincerely promiſe —— to embark for the ſaid plantation, by the firſt of March next, —— to the end to paſs the ſeas (under God's protection) to inhabit and continue in New-England. Provided always, that before the laſt of September next, the whole government, together with the patent for the ſaid plantation, be firſt, by an order of court, legally transferred and eſtabliſhed to remain with us and others which ſhall inhabit upon the ſaid plantation."

[8] 7 and 8 Will. ch. 22. — [9] Hutch. Hiſt. Maſſ. 1 v. p. 86. — [10] See the oath before, ch. 2. — [11] Hiſt. New-Eng. 2 v. p. 477-8. — [12] Ib. 1 v. p. 139-40; Joſſelyn, p. 251. — [13] This curious paper is in Neal, 1 v. p. 141-3 — [14] See Coke's 5th Report, the caſe of the king's eccleſiaſtical law. — [15] Joſſelyn, 151-2; Neal, 1 v. p. 143-5. — [16] Ib. 145. — [17] Hutch. 1 v. p. 12, who cites the records.

[18] The memorials and other public papers, which were preſented to the committee of colonies during the diſputes with Maſſachuſets in the reign of Charles II. were conſtantly obtained "by indirect means," and tranſmitted by the colonial agents: "Whereby, ſaid the complainants "on this ſubject, not only the king's councils have been diſcovered, but "there has been laid a ſcene of ruin to thoſe ſuſpected of loyalty." — N. Eng Ent. 1 v. 250-60. — That monarch, extremely offended with a conduct

a conduct ſo offenſive and dangerous, exerted himſelf vigorouſly in defence of his few friends at Boſton. And the general court, either overawed, or apprehenſive at that time for the future, did not carry matters to extremity againſt them, otherwiſe it might have proved extremely fatal. For, by an ancient law of that colony: "If any man attempt "the alteration or ſubverſion of the government, he ſhall ſuffer death.—Ordin. of N. Eng. abridged, p. 32.—The following extract of a letter, dated in October, 1666, from Colonel Nichols, who was one of the king's commiſſioners and the conqueror of New-York, to the ſecretary of ſtate, ſhews the diſhonourable practices of thoſe days.—From New-York Ent. 1 v. p. 28.

"I think it my duty to inform you, that a copy of his majeſty's ſigni-"fication to the Maſſachuſets was ſurreptitiouſly conveyed over to them, "by ſome unknown hand, before the original came to Boſton; and, "formerly, the very original of Mr. Meverick's petition to the king in "council [concerning Maſſachuſets] was ſtolen out of Lord Arlington's "office by Captain John Scot, and delivered to the governor and coun-"cil at Boſton. This I affirm poſitively to be true; though Scot, when "I queſtioned him upon the matter, ſaid, a clerk of Mr. Williamſon's "gave it him."

CHAP.

CHAP. VII.

Several perſons reſolve to emigrate.—They purchaſe the charter of Maſſachuſets.—The corporation removed thither.—The unwarrantable conduct of the colony.—Proceedings of the privy-council.—Sectaries ariſe in Maſſachuſets.—They are perſecuted, and emigrate.—Complaint againſt it.—A writ of quo warranto iſſued againſt its charter.—A remarkable petition of the general-court.—New perſecutions and emigrations.—Synods called.—Obſervations.—State of the colony at the commencement of the civil wars.

WHEN Charles I. in anger diſſolved the parliament, in the year 1628, he reſolved, with his wonted imprudence, never to call it again. His ſubſequent government, equally illegal and irregular, was, for too many years, conducted agreeably to the ſpirit of the reſolution he had formed. And, though perſecution had only confirmed men in their religious ſcruples, and had augmented the number of diſſenters from the eſtabliſhed church, the eccleſiaſtical adminiſtration became daily more intolerable to men, who conſidered all eſtabliſhments, which they did not themſelves direct, as burdenſome and tyrannous.

Several perſons of conſiderable conſequence in the nation, who had adopted the principles of the Puritans, and who wiſhed to enjoy their own mode of worſhip, formed the reſolution of emigrating to Maſſachuſets. But they felt themſelves inferior neither to the governor nor aſſiſtants of the company; they ſaw and dreaded the inconvenience of being governed by laws made for them without their conſent: And it appeared more rational to them, that the colony ſhould be ruled by thoſe who made it the place of their reſidence, than by men dwelling at the diſtance of three thouſand miles, over whom they had no controul. At the ſame time, therefore, that they propoſed to tranſport themſelves, their families, their eſtates, to that country, they inſiſted, that the charter ſhould be tranſmitted with them, that the corporate powers, which were conferred by it, ſhould be executed in future in New-England.

Larger

Larger ſums of money had been already expended, in this enterpriſe, than the company had any immediate proſpect of being ſoon reimburſed from the profits of the adventure: And, though the greateſt doubts were juſtly entertained with regard to the legality of the propoſed meaſures, the expediency of engaging many perſons of wealth and intereſt to aſſiſt them in that expenſive undertaking was apparent to every one. The governor and company, having entered into all their views, called a general-court in Auguſt, 1629; when it was unanimouſly reſolved, "that the patent "ſhall be transferred, and the government of the corporation removed "from London to Maſſachuſets-Bay."

A tranſaction, ſimilar to this in all its circumſtances, is not to be eaſily met with in ſtory. A corporation had been inveſted, by a patent, with ſpecial privileges, for the execution of an important truſt, the government of a colony: It was at the ſame time implied, that, for every abuſe of its franchiſes, and for every miſuſe of its authority, the charter ſhould inſtantly become void; that, when the body politic had broken the condition on which it was granted, the incorporation inſtantly ceaſed: And theſe doctrines, not only of the law of England, but of univerſal juriſprudence, were ſo determined by the higheſt courts of England immediately after the Revolution.[2] To every corporation is neceſſarily incident the right to purchaſe and to ſell; but this is the firſt inſtance of a corporate body that ever ſold itſelf. All the ſubſequent proceedings of the governor and company muſt partake of this ſignal irregularity.

In order to carry this extraordinary reſolution more effectually into execution, a general-court was called in October, 1629. And of thoſe, who intended to ſettle in the colony, the company choſe Winthrop, governor, Humphries, deputy-governor, and aſſiſtants, as directed by the charter. But, it was not till the beginning of the ſubſequent year, that ſeventeen veſſels ſailed from Southampton, tranſporting to New-England about fifteen hundred emigrants, the officers above-mentioned, with their patent: The expence was upwards of one-and-twenty thouſand pounds. And, after a tedious voyage, during which they contracted various diſtempers, this fleet arrived at Salem in July, 1630. But, diſliking a ſituation that did not appear to advantage when compared with what they had

had left, ſome of the emigrants removed to Charles-town, at the ſame time that others of them ſettled on the peninſula, at the bottom of the Bay, and laid the foundation of the famous town of Boſton. The year 1630 is the remarkable æra of the commencement of the government and the foundation of the capital of Maſſachuſets. When Joſſelyn viſited Boſton, in the year 1638, "he found it rather a village than a town, "there being not above twenty or thirty houſes."

The emigrants too ſoon encountered all the difficulties neceſſarily incident to their undertaking. Little had they to ſhelter themſelves from the inclemeney of the weather but the miſerable hovels that had been haſtily reared; they were obliged to feed on the productions of nature: And, before the ſubſequent December, two hundred of them had periſhed. Humanity will drop a tear over the graves of the dead, though ſhe cannot altogether approve of the ſavage fury with which they deſerted their native land, when it required the aid of their exertions. The colony was threatened with famine. And about one hundred perſons, of weaker minds, totally diſcouraged, returned by the ſame veſſels to England.[3] But what cannot men encounter and endure, when their minds are wound high either with hope of relief from preſent evil, or with expectation of future happineſs!

The coloniſts were obliged to attend ſo much to the erection of habitations, and the procurement of food, that little public buſineſs was for ſome time tranſacted. The governor and aſſiſtants mean-while formed a court for the determination of the greateſt affairs, whether civil or criminal. In Auguſt, various officers were appointed; and, for the preſervation of tranquillity, juſtices of the peace, with the ſame authority as that of the ſame magiſtrates in England, were inſtituted. A homicide having been ſoon after committed, the criminal was tried by a jury, and acquitted.[4] But, were it proper to judge of the proceedings of ſuch a people by the law of England and their charter, the legality of that tranſaction might be well queſtioned. Their patent gave them no power to puniſh with death, and nothing but poſitive words could have conferred ſuch authority on a mere corporation. The only juriſdiction, that was granted, was, permiſſion "to impoſe fines, impriſonment, or other "lawful

"lawful correction, according to the courſe of ſuch corporations in Eng-"land." Yet trivial was this deviation, when compared with thoſe which we ſhall meet with in the ſequel.

The firſt general court, compoſed, as the charter required, of the governor, deputy-governor, aſſiſtants, and freemen in perſon, was held in October, 1630. There were choſen, for the firſt time, many freemen; ſome of whom were not members of the eſtabliſhed church. Innovations began now to multiply. It was enacted, that the freemen ſhall in future chooſe the aſſiſtants; who were empowered to make laws, and appoint officers, to nominate two of themſelves as the chief and deputy governor. Here was a new inſtance of a deviation from their charter, which ſuppoſed the manifeſt incongruity, that a corporate body may confer new powers upon itſelf. While the ſpirit of innovation thus went forth, the ruling men ſhewed their own temper, by ſending forcibly to England thoſe whoſe opinions or practice they did not believe were ſufficiently orthodox.

Having ſurvived the ſeverity of the winter, with great difficulty, the general court once more convened, in the beginning of the year 1631; when the rule, which had been ſo lately eſtabliſhed, was inſtantly reprobated: And it was ordained, "that the governor, deputy-governor, and aſſiſtants ſhall in fu-"ture be choſen by the freemen alone." Nothing can evince, more clearly than this proceeding, ſtill more inconſiſtent with the charter, how prone mankind are to change, when they have once departed from the ſtrict principles, from the letter, of their conſtitutions: And the intolerant ſpirit, which then animated the greater number, at the ſame time decreed, that none ſhall be admitted to the freedom of the company, but ſuch as were church-members; that none but freemen ſhall vote at elections, or act as magiſtrates or jurymen. This ſevere law, which was made in the true ſpirit of retaliation, notwithſtanding the vigorous exertions of Charles II. continued in force, till the writ of quo warranto laid in ruins the ſtructure of government that had thus eſtabliſhed it. And ſuch were the neceſſary requiſites to qualify for membership among that ſingular people, that many, unable to comply, were excluded, as well from the communion of the church, as from any participation in the

government: "Thus retaliating on others what they had formerly deemed intolerable severities; and shewing how apt men are, when under improper influence, to inflict what they will not patiently endure. The distresses of the former year seem to have inspired an attention to the operations of tillage, which produced in due season an abundant harvest: And, in order to cultivate a spirit which was so extremely beneficial, it was enacted, "that Indian corn shall be deemed a legal tender in dis-"charge of debts. The numerous colonists, who arrived in 1631, consequently enjoyed a plenty, which their predecessors had sighed for to no purpose.

During the subsequent year, the governor conciliated, with great attention, the friendship of New-Plymouth. Nor could any measure be more necessary or prudent. Not only that colony, but Massachusets, was extremely alarmed with the conduct of the neighbouring French; who, in taking possession of Acadie, subsequent to its restitution by the treaty of St. Germain, dispossessed the people of New-Plymouth of their trading house at Penobscat. And then commenced those mutual complaints of mutual encroachments, which produced, in after-times, the most important events; and which involved England in expences and debts that have been long deplored, without hope of relief from those who chiefly derived the advantage. Massachusets was meanwhile considerably disturbed by the commotions of the aborigines around. And a treaty of friendship was the result, which proved as fortunate to the one party as fatal to the other. Yet it does not appear that any compensation was given to the natives, when possession was taken of their country, by a people who soon overspread the land, and unjustly deemed every exertion in its defence an act of rebellion against their laws.[6] Had the tribes any other mode of acquiring experience, than from the tradition of their fathers, what a school of knowledge, moral and political, would the colonial annals open to their researches!

The proceedings of the governor and company had been extremely irregular, not to say illegal, and inconsistent with their charter. And, in the end of the year 1632, those, who had been expelled the colony, because their principles and practice were disapproved of, presented a petition

tion to Charles, complaining of their tyranny, and of the wrongs which they had ſuffered. That monarch had indeed been informed " of great " diſtraction and much diſorder in that plantation." The complaint, being referred to the committee of privy-council for colonies, was heard in January, 1632: But, " moſt of the things informed being denied, " and reſting to be proved by parties that muſt be brought from that " place," the committee, to avoid diſcouragement to the adventurers, " who were upon diſpatch of men, victuals, and merchandiſes," and in hopes that the colony, which then had a fair appearance, might prove beneficial to the kingdom, diſmiſſed the petition: Giving this additional reaſon, " that they were not diſpoſed to lay the faults or fancies, if any " be, of ſome particular men upon the general government, which in " due time is to be farther inquired into." From this and ſimilar tranſactions, the leaders of that colony learned all the advantages of delay, which muſt never fail to reſult from diſtance of ſituation and efflux of time; and from which, in after-times, they profited extremely.

The prudent had waited with anxiety, in England, to obſerve the ſucceſs of the firſt emigrations, before they ſhould venture a-croſs the ocean. They had been lately aſſured of their happy ſucceſs. The adminiſtration of that miſguided reign became daily more offenſive to them. And great numbers, animated with the various paſſions which then occupied the minds of men, prepared to follow their example. But, whether from the greatneſs of the intended tranſportation, or that there were among the emigrants " divers perſons, as the order ſays, known to be ill-affec- " ted, diſcontented not only with civil but eccleſiaſtical goverament here," the government ſeems to have been alarmed; and an order was iſſued by the privy-council, in February, 1633, " to ſtay the ſhips ready to ſail, " freighted with paſſengers and proviſions." Were we to judge of that tranſaction by the law and principles of modern times, how unconſtitutional and arbitrary would it appear! Yet it ought to be remembered, and it juſtifies in ſome meaſure the irregularity before-mentioned, that a power was reſerved, by the charter, to reſtrain any perſons by ſpecial name from tranſporting themſelves to that colony. And, with a jealouſy, which evinces that all the pernicious conſequences of removing the ſeat

of the corporation from London to Maſſachuſets were ſeen, Cradock, the firſt named governor of the company, was required to cauſe the letters patent to be brought to the board. The order, it ſhould ſeem, was not effectually executed, and great numbers emigrated during the year 1633: [8] Flattering themſelves that they ſhould enjoy there perfect freedom, civil and religious.

It would have been extraordinary indeed, had there not ariſen, in thoſe days and among ſuch a people, men, who preached the wildeſt doctrines in religion and in government. Roger Williams, the famous miniſter of Salem, always fruitful in religious frenzies, maintained a variety of opinions, tending equally to ſap the foundation of the eſtabliſhment in church and ſtate, and to weaken the principles on which the leading men in both had acquired their influence. And, being a popular preacher, he ſoon gained many diſciples, who were pleaſed with the novelty of his ſentiments. Endicot, one of his followers, in his zeal againſt ſuperſtition, "cut the red croſs out of the king's colours," as a relique of anti-chriſtian ſuperſtition; and though this act of religious folly was generally conſidered as ſeditious, the people ſoon became divided in their notions "concerning the lawfulneſs of the croſs in the banner." Learned treatiſes were written and publiſhed on both ſides. Even the train-bands, who, upon ſuch occaſions, enter into religious controverſy, differed in opinion on this intereſting ſubject; ſome refuſing to follow the colours with a croſs, that they might not be thought to do honour to an idol; while others followed it leſt they ſhould be deemed wanting in their allegiance to the king. After this controverſy had for ſome time diſtracted the colony, it was ended by compromiſe; the croſs was retained in the banners of ſhips and caſtles, but in the colours of the train-bands it was generally omitted. [9] Nothing can demonſtrate more clearly the dark fanaticiſm of the times and of the people than this ſingular diſpute.

But all endeavours having been uſed in vain to convince Williams of his errors, and to prevent him from propagating doctrines ſo inconſiſtent with their opinions, of various kinds, ſo contrary to their views and intereſts,

intereſts, the magiſtrates, according to the genius of that government, at length interpoſed. They baniſhed him as a diſturber of the peace, both of church and commonwealth. He laid the foundation of Providence plantation. And Endicot was ſentenced "to be ſadly admoniſhed, and to be diſabled from holding any office during a year, for his "indiſcretion and uncharitableneſs." [10] Yet this gentleman lived to be honoured with the reſentment of Charles II. ſubſequent to the Reſtoration, who, in ſome meaſure, aſked it as a favour of that colony no more to chooſe one as governor who had ſhewn himſelf an enemy to regal power.

As the coloniſts increaſed in numbers, by the arrival of freſh emigrations from England, they ſpread themſelves wide over the country, and planted various towns; they naturally fell into peculiar cuſtoms, and became impatient under thoſe laws, which had been made for them by a legiſlature, that had been created by their charter, and new-modelled by themſelves. Hitherto the legiſlative power had conſiſted of the governor, deputy-governor, the aſſiſtants, and of the freemen in perſon: [11] But the real power was chiefly engroſſed then, as it has been at all times ſince, by an oligarchy, conſiſting of thoſe officers, aided by the clergy, from which the great body of the inhabitants were wholly excluded. And they ſoon became jealous of an authority that was ſo deſtructive of their own importance. As if, by general conſent, though the meaſure was probably ſuggeſted by thoſe who hoped to gain by it, they reſolved to change their chartered conſtitution, and to add repreſentatives of their own, to aſſiſt in tranſacting the affairs of the colony. In proſecution of theſe views they ſent twenty-four deputies to the general-court, which convened in May, 1634. [12] But how much ſoever were the governor and aſſiſtants aſtoniſhed to ſee theſe appear inſtead of the freemen, who alone had a right to vote, they were conſtrained to ſubmit to an innovation which they had not power to oppoſe, and which, in after-times, occaſioned conſiderable embarraſſments. Here then is the remarkable epoch of the introduction of delegates into the general-court: [13] And thus, were we to decide according to the principles of theoriſts, did the freemen at once give up their own rights and enſlave the colony. But it is hiſtory

which

which throws a ridicule upon the graveſt reaſonings of enlightened men on the nature of government. It was the inconvenience, perhaps impoſſibility, of the whole freemen meeting in one aſſembly, which induced them to aſſume the power of electing perſons to repreſent them, and to take care of their intereſts. But how reaſonable or neceſſary ſoever was this important change, and it had been unexceptionable had Maſſachuſets been an independent ſtate, it was altogether inconſiſtent with their charter, which neither gave power to admit deputies, nor to call ſpecial aſſemblies. That ſpirit of innovation, which had actuated the inhabitants, now continued to operate in the general-court. And a variety of regulations were ordained, which almoſt wholly changed the nature of their former government: Enacting, among other regulations, that none but the general-court ſhould raiſe taxes, grant lands, or appoint officers. The legality of theſe meaſures, however, cannot eaſily be ſupported by fair diſcuſſion, or by any other than thoſe principles of independence which naturally ſprang up among ſuch a people, during ſuch a ſeaſon, and have at all times governed their actions.

The colonies mean while not only greatly engaged the public attention, but attracted the particular notice of the jealous adminiſtration in England. The loudeſt complaints had been made to Charles I. againſt the governor and company of Maſſachuſets; which had induced the privy-council to declare, "that their conduct, in due time, was farther to be "inquired into." With this, and other deſigns, a commiſſion was directed, in April, 1635, to the great officers of ſtate and to ſome of the nobility, "for the regulation and government of plantations." It recited: "That divers ſubjects, by virtue of royal authority granted to "them with a view to enlarge the territories of the empire, had deduced ſeveral colonies." For the eaſe and tranquillity, for the protection and government, of thoſe ſubjects, abſolute power was granted to the archbiſhop of Canterbury, and to others, "to make laws and conſtitutions, concerning either their ſtate-public, or the utility of individuals." For the relief and ſupport of the clergy, the commiſſioners were authoriſed "to conſign convenient maintenance unto them, by "tithes, oblations, and other profits, according to their diſcretion."

They

They were empowered to inflict punishment on violators of their ordinances, either by imprisonment or by the loss of life and members, according to the quality of the offence. They were authorised to remove governors of plantations, to appoint others, and to punish delinquents. They were enabled to constitute tribunals and courts of justice, ecclesiastical and civil, with such authority and form as they should think proper; provided, however, that those laws and constitutions should not be put in execution till the royal assent was first obtained, nor till they were proclaimed in the several colonies. The commissioners were constituted a committee to hear and determine all complaints, whether against colonies, or against governors, or other officers; and, for punishment of the guilty, "to remand and cause the offender to return to Eng-"land." If, upon inquiry, they found any letters patent, granted for establishing colonies, to have been unduly obtained, or that the liberties granted were hurtful to the prerogative royal, they were directed to cause such to be revoked.[14]

This commission, dictated in the genuine spirit of those days, is no less remarkable than important; because it demonstrates the opinion and practice of the times, and exhibits a true picture of the violent administration of the colonies during that reign. Unnecessary is it to observe, that, like the ship-money and other similar enormities, that royal edict is not only inconsistent with every salutary principle of just government, but is contrary to that law, which the petition of right had been so lately enacted to declare and enforce. Yet, when contrasted with modern transactions, what abundant reflexions doth it offer to the wise! And that extraordinary authority was perhaps very seldom exerted, because the time now fast approached, when a similar jurisdiction was invested in different hands by a different power.

Among the numerous emigrants, who arrived in Massachusets in the year 1635, Hugh Peters and Sir Harry Vane, junior, appeared conspicuous: Even then this personage was considered "as a warm hot-"headed young gentleman, whose zeal for pure religion made him de-"sirous to come into those parts." In compliment to his family, and to his talents, he was chosen governor of the colony in the subsequent year;

year; but, may we credit the more ancient colonial writers, "Vane's "election will remain a blemiſh on their judgements, who did elect him, "while New-England remains a nation." He was too deep an enthuſiaſt, it ſhould ſeem, even for the enthuſiaſts of Maſſachuſets. After enjoying the firſt offices, and entering zealouſly into all the factious and fanatical contentions of that turbulent government, he returned to England in Auguſt, 1637. And, being choſen a member of the long parliament, he at length entered a field worthy of his abilities. The fate of both after the Reſtoration is ſufficiently known to every one. The year 1635 is chiefly remarkable for an attempt to introduce freſh innovations into the colonial conſtitution. Several perſons having applied to the general court for leave to remove from Maſſachuſets in queſt of other ſettlements, great contrariety of opinions aroſe: A majority of the aſſiſtants refuſing, and the greater number of the deputies granting, their requeſt. The latter inſiſted, that the vote of a majority of the whole legiſlature was deciſive; the former, ſeeing their utility and importance in the commonwealth in danger of being annihilated, contended, that the conſent of the greater number of them was eſſential to every act. As both ſides were obſtinate, public buſineſs could be no more tranſacted. A day of humiliation was appointed for all the congregations to ſeek the divine direction: Yet the charter was neither inſpected, nor thought of, on an occaſion which ſeemed ſo extremely proper. Partly owing to a pertinent ſermon of the famous Cotton, but more to the influence of the elders with the people, the delegates were prevailed on to wave, for that time, the controverted point. And an irruption of the Indians gave warning to both parties of the great danger of zeal."[15]

The government of England, both in church and ſtate, became daily more intolerable; and all men perceived a tyranny introduced, and the conſtitution in a great meaſure ſubverted. Sir Matthew Boynton, Sir William Conſtable, Sir Arthur Hazeling, Hampden, Pym, Oliver Cromwell, who bore ſo able and important a ſhare in the conduct of that intereſting period, reſolved to leave a country[16] whence freedom was baniſhed, that they might enjoy the object of their wiſhes in New-England. But the adminiſtration, "being informed that many perſons

"tranſported

" tranſported themſelves to that country, whoſe end was to live out of " the reach of authority," appears to have been both offended and alarmed. For, in April, 1637, a proclamation was iſſued,[17] " to re- " ſtrain the diſorderly tranſporting of his majeſty's ſubjects to the colo- " nies without leave :" It commanded, " that no licence ſhould be gi- " ven them, without a certificate that they had taken the oaths of ſu- " premacy and allegiance, and had conformed to the diſcipline of the " church of England." But, as extreme violence generally defeats itſelf, this mandate ſeems not to have been effectually executed. And, in May, 1638, a freſh proclamation was publiſhed,[18] " commanding owners " and maſters of veſſels, that they do not fit out any with paſſengers " and proviſions to New-England, without licence from the commiſ- " ſioners of plantations." Happy perhaps would it have been, for himſelf at leaſt, had the miſguided Charles ſuffered thoſe veſſels to have ſailed, that they might have tranſported paſſengers beyond the Atlantic, who afterwards proved ſo fatal to him ! " This proceeding, we are aſ- " ſured, increaſed the murmurs and complaints of the people, and raiſed " the cry of double perſecution, to be vexed at home, and not ſuffered " to ſeek peace abroad."[19] But ſo difficult is it to reſtrain men whoſe minds are greatly agitated, either by fear or hope, that great numbers found means to elude the vigilance of government, and to tranſport themſelves, in the year 1637, to Maſſachuſets ; which proportionably augmented its numbers and power.

The general adminiſtration of that corporation had been hitherto not only inconſiſtent with Engliſh laws, and contrary to its charter, but extremely oppreſſive over thoſe who were not members of its church. And it ſoon felt the effects of the royal commiſſion before-mentioned : The legality of which the general court neither preſumed to deny nor dared to queſtion. A writ of quo warranto was iſſued therefore againſt its charter. Judgement was given, that the liberties of Maſſachuſets ſhall be ſeized into the hands which conferred them, becauſe they had been improperly exerciſed.[21] And the privy-council, not long after, " ordered the governor and company to deliver up their patent, and to " ſend it back by the next ſhip to England." Yet, prudently bending

before a ſtorm which they could not then withſtand, they eaſily eluded the force of its violence.

When the council of Plymouth ſurrendered its patent, in June, 1635, it was inſtantly determined, by Charles I. to aſſume the government of a country which corporations ſeemed to have ruled to ſo little purpoſe. In order to execute this favourite project, moſt of the violent proceedings before-mentioned were adopted. And at length, upon complaints of ſeveral diſorders in New-England, that prince, in July, 1637, appointed Sir Ferdinando Gorges general governor over the whole. It was at the ſame time ordained, that no perſons ſhould tranſport themſelves to that country without ſpecial warrant; reſerving only a liberty of that kind to thoſe who had joined in the ſurrender of the great charter, and ſhould take out new patents for their ſeveral plantations, to be holden immediately from the king. Yet this extenſive meaſure, owing to its real difficulty, was never executed: And the attention of all was attracted, in a few years, to more intereſting objects."[22]

The general court, however, which convened in September, 1638, inſtead of complying with the command above-mentioned, tranſmitted a petition to the royal commiſſioners. It repreſented, in characteriſtic language, and in a ſtrain of ſentiment far different from that of recent times: "We dare not queſtion your lordſhips proceedings, in requi-" ring our patent to be ſent unto you; we only deſire to open our griefs; " and if, in any thing, we have offended his majeſty or your lordſhips, " we humbly proſtrate ourſelves at the footſtool of ſupreme authority; " we are ſincerely ready to yield all due obedience to both; we are not " conſcious that we have offended in any thing, as our government is " according to law: We pray that we may be heard before condemna-" tion, and that we may be ſuffered to live in the wilderneſs."[23] The general court was probably ſincere; its hiſtory ſhews how far theſe repreſentations were true. But, may we rely on the opinion of Jones and Winnington, the quo warranto was neither ſo brought, nor the judgement ſo given, as to cauſe a diſſolution of the charter.[24] And the inſurrections, which ſoon after broke out in Scotland, turned the views of that monarch to tranſactions which more nearly concerned him. The

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general-court long retained quiet poſſeſſion of the patent, and of that government, which, however contrary to the principles of its connexion with England, it had erected for itſelf. Thoſe, who compare the whole circumſtances of thoſe proceedings with the adminiſtration of the colonies during the preſent times, will probably find abundant cauſe for reflexion.

Mean-while, the colony was divided within itſelf into two potent factions: The one was compoſed of thoſe who contended for "a covenant "of works;" the other contained thoſe who were equally zealous for "a covenant of grace." Thoſe contentions, proceeding from religious diſputes and ſubtilties altogether unintelligible, while the fear of God and the love of their neighbours were too much neglected by every one, prevailed not only in private families, but in the church and the legiſlature. The affections of the inhabitants being alienated from one another, they carried their animoſities to the greateſt extremity; almoſt to civil war. The army too, generally little prone to religious controverſy, was ſeized with the univerſal contagion, and refuſed to march againſt the Indians, becauſe it was under a covenant of works.[25]

In order to heal thoſe diſorders which then diſtracted the colony, to reſtore peace to the ſtate, and if poſſible to procure unanimity in the church, a ſynod was aſſembled for the firſt time in Auguſt, 1637, by order of the general-court. And there were admitted to that aſſembly the favourers of the new opinions, at the head of whom were Sir Harry Vane and Mrs. Hutchinſon, a famous leader of the Antinomians. After ſitting three weeks, the ſynod unanimouſly condemned no leſs than eighty-two erroneous opinions, which had been maintained in different parts of the colony. But unanimity was not however reſtored. And it was determined, by the ruling powers, to have recourſe to the ultimate remedy, the ſword of the magiſtrate. The general-court, actuated by the genuine ſpirit of bigotry, and by an unexampled inconſiſtence of principle and practice, on the uſual pretences of preſerving the peace of the country, of preventing "ſectary infection," commenced a ſevere perſecution againſt all who differed from the church in opinion. Some were diſfranchiſed, but more were baniſhed.[25] Fearful of a tumult at Boſton,

which even in thoſe days was remarkable for turbulence, that body, with a vigour peculiar to it, diſarmed many of the inhabitants; and it paſſed a law, inflicting heavy penalties on all who ſhould defame any court of juſtice. Thoſe meaſures, equally unnatural and unjuſt, occaſioned a conſiderable emigration from Maſſachuſets, which laid the foundation of Rhode-Iſland[26] and other ſettlements.

With ſimilar views, and if poſſible to eſtabliſh a ſimilar uniformity in faith and in diſcipline to that from which the coloniſts had fled, another ſynod was called in September, 1648.[27] But an attempt, which has been found in every country an impoſſibility, as might have been foreſeen, proved nugatory in Maſſachuſets. And experience, when too late, convinced the general-court, what it had already demonſtrated to the world, that, to preſerve freedom to the individual, and peace to the whole, a liberal toleration[28] is the only effectual expedient. A third ſynod was held, in the year 1662, with deſign to compoſe thoſe debates which then diſtracted the colony, with regard to the right of grand-children of church members to baptiſm, whoſe parents had not entered into communion with the church.[29] A fourth ſynod, which is the laſt that occurs in the ſtory of that colony, aſſembled in May, 1678, for the determination of two queſtions; "what are the reaſons that have provoked "the Lord to bring his judgements on New-England? what is to be "done that thoſe evils may be removed?"[30] And theſe queſtions evince, that when fanaticiſm had happily departed from England it continued to ſhed its baneful influence on Maſſachuſets. A convention of miniſters, indeed, aſſembled at Boſton, in May, 1724, and petitioned the general-court to call the ſeveral churches of the province, to meet by their paſtors and meſſengers in ſynod. But the conſideration of that buſineſs being poſtponed till the ſubſequent ſeſſion, the lords juſtices, who then governed the nation, obſerved the tranſaction with great jealouſy, "as a "matter which highly concerned the royal prerogative," and referred the conſideration of it to the attorney and ſolicitor general. "Upon ma-"ture deliberation," they delivered their opinion; that his majeſty's ſupremacy in eccleſiaſtical affairs, being a branch of his royal prerogative, does take place in the plantations; and that ſynods cannot be held, nor

is

is it lawful for the clergy to aſſemble, as in ſynods, without authority from his majeſty."

How amuſing is it to remark the prodigious difference, which hiſtory often points out, between the theoretic reaſonings of men, in oppoſition to eſtabliſhed ſyſtems and their own practical adminiſtration, when they have acquired power! The puritans revolted in former times, againſt the authority of the church of England, with a vehemence and zeal, as if their exiſtence and ſalvation had depended upon the obſervance of ceremonies purely indifferent, or upon the practice of ſingularities perfectly ridiculous. Yet, they no ſooner acquired ſuperiority in Maſſachuſets than they adopted the ſame eccleſiaſtical powers, which they had formerly rejected with abhorrence, as equally contrary to reaſon and ſcripture. And they ſoon enacted: That no churches ſhall be gathered but ſuch as are approved by the magiſtrate. Now, the policy, eſtabliſhed by this law, is exactly the ſame as the common-law principle before ſuggeſted; ſubſtituting the colonial officer in the place of the king, and creating that authority which they had formerly abhorred. We have beheld the church of England already ſuppreſſed. Several perſons, who arrived at Boſton in the year 1643, attempted to eſtabliſh preſbyterian government, under the authority of the convention of divines at Weſtminſter; but, as we are aſſured, "a New-England aſſembly, the general court, ſoon put them to "the rout."" Conſiſtence of principle or of action is not to be expected, however, from bigotry, civil or religious: And, were it not for the numerous ills which it too often brings into the world, we might view its follies with pity or contempt.

When the parliament aſſembled, in the year 1640, after ſo long a receſs, perſecution ceaſed in England, and the recovery of domeſtic liberty prevented the deſire of enjoying it in Maſſachuſets. Partly owing to this circumſtance, but more to an ordinance paſſed in 1637, which enacted, with a ſignal folly, "that none ſhall entertain any ſtranger who ſhould "arrive with an intent to reſide, or ſhall allow the uſe of any habitation, "without liberty from the ſtanding council," emigrations wholly ceaſed. And hiſtorians aſcribe to this circumſtance a remarkable change in the political œconomy of that colony: A cow, which formerly ſold for twenty

twenty pounds, now ſelling for ſix; and every colonial production in proportion. In the preceding twenty years about four thouſand families; or twenty thouſand perſons, had emigrated to New-England; but, from that time, as many returned hither from that country as went from England to Maſſachuſets. There had been not only a prodigious alteration of the manners and principles of the times but a total revolution of power. Several of the moſt conſiderable emigrants returned therefore to participate, with their brethren in England, of thoſe offices of profit and truſt which they only enjoyed, and of which they had now acquired the excluſive diſpoſal. Many of the clergy too, among whom was the noted Hugh Peters, forſook thoſe ſanctified regions, as they called New-England, and returned to their native country, to enjoy more abundant livings in a better land.[33]

Though religious matters engaged much of the attention of the firſt planters, they ſeem to have been extremely induſtrious in temporal affairs. Neceſſity at firſt introduced what their juriſprudence afterwards cultivated: All their laws had a natural tendency to exclude luxury and to promote diligence. When the civil wars commenced, they had already planted fifty towns and villages; they had erected upwards of thirty churches and miniſters houſes; and they had improved their plantations to a high degree of cultivation.[34]

For years after the remarkable innovation of admitting delegates into the general-court, inſtead of the freemen, the whole formed the legiſlature of the colony, and voted together in one apartment. But another intereſting change occurred in March, 1644; when it was ordained, that the governor and aſſiſtants ſhall ſit apart: And thus commenced the democratic branch of the legiſlature, or houſe of repreſentatives.

The governors and aſſiſtants compoſed the ſuperior court, for the determination of cauſes, civil and criminal; though not without being diſturbed by the claims of the deputies, who inſiſted on an equal participation with them in the exerciſe of that important power. The colony had been divided, in more early times, into three counties, and inferior courts were eſtabliſhed in each for the determination of ſmaller affairs. A ſmall body of maritime laws were enacted for the convenience of commerce;

merce; which was greatly encouraged. A court-merchant, for the ſpeedy adminiſtration of juſtice to ſtrangers, was eſtabliſhed: And, with ſimilar views, fairs and markets were erected. [35]

Their code of criminal law was perfectly congenial with the principles of this ſingular people. Jeſuits and popiſh prieſts were ſubjected to baniſhment, and, upon their return, to death. This ſevere law was afterwards extended to the Quakers, upon their appearance in the colony; and it was ordained, in the year 1652, that none of "that curſed ſect" ſhall be imported into the colony; that Quakers convicted ſhall be baniſhed, upon pain of death: [36] And thoſe abominable ordinances are the more extraordinary, becauſe they were as little warranted by the charter as by the principles of humanity; [37] the Independents, as we are aſſured, [38] of all the Engliſh fanatics, approach the neareſt to the Quakers; and it is the enormity and dangerous tendency of the crime which can alone juſtify any human legiſlature in depriving him of life who commits it. [39] But the uſual puniſhments of great crimes were diſfranchiſement, ſervitude, and baniſhment: [40] Yet no perſons were allowed to be ſlaves, but ſuch as were lawfully taken in the wars; and theſe were to be treated with Chriſtian uſage, as was given to bondmen by the law of Moſes. [41] Adultery was puniſhed with death; and fornication by the compelling of marriage, or by fine or impriſonment. [42] Burglary, or robbery, was to be puniſhed for the firſt offence by branding, for the ſecond by the ſuperaddition of a ſevere whipping, and for the third to be put to death; but, if thoſe crimes were committed on the "Lord's-day," an ear was to be cut off, in addition to other puniſhments. [43] Blaſphemy was puniſhable with death; and, though it was acknowledged, "that "no human power is lord over the faith and conſciences of men;" yet hereſy was puniſhed with baniſhment, and idolatry by death. [44] Perſons conſpiring an invaſion or public rebellion againſt the commonwealth, or attempting the alteration or ſubverſion of the government, were to ſuffer death. [45] After conviction, a criminal, refuſing to diſcover his confederates, might be tortured, yet not with ſuch tortures as are barbarous and inhuman; but their law generally compelled humanity to ſervants, to criminals, and to beaſts. [46] No feaſts or feſtivals, ſuch as Chriſtmas, Eaſter,

Eaſter, or Whitſuntide, were allowed. All gaming was prohibited; nor were any cards or dice to be imported: And, to preſerve the purity of their manners, dancing in ordinaries was proſcribed.[47]

But the common or ſtatute-laws of England, founded in reaſon, and matured by the ſucceſſive wiſdom of ages, were deemed of no force, becauſe they were thought inapplicable to ſuch religious coloniſts: It was enacted therefore, that when the cuſtoms of the commonwealth were found defective, the crime ſhall be decided according to the word of God: And in thoſe days, as we are aſſured, "the Bible was their body of laws, "in civil, eccleſiaſtical, and criminal, caſes."[48] Marriages were regulated; and none were allowed to perform the marriage-ceremony but the magiſtrate, or ſuch other perſons as the general-court ſhall authoriſe. Their law of tenures was extremely ſimple and conciſe. The charter had conveyed the general territory to the company and its aſſigns: And it was very early enacted, "that five years quiet poſſeſſion ſhall be deemed "a ſufficient title."[49]

This uncommon ſyſtem of laws, proceeding from the ſpirit of the people, not only evinces the nature of their principles, but has greatly influenced the progreſs of their manners, and their political conduct, from the epoch of their emigration to the preſent times.

AUTHORITIES AND NOTES.

[1] Neal's N. England, 1 v. p. 146-7. Hutch. Hiſt. Maſſ. 1 v. p. 12-14. — [2] Modern Reports, 4 v. p. 52. — [3] Neal's N. Eng. 1 v. p. 147-9. Dougl. Sum. 1 v. p. 426. Joſſelyn, p. 19. — [4] Hutch. Hiſt. Maſſ. 1 v. p. 25-6. — [5] Ib. 26. — [6] Ib. 27. Charles I. in November, 1630, iſſued a proclamation, "forbidding the diſorderly trading with the ſalvages "in New-England for weapons of war." Rym. Fœd. 18 v. p. 210; and Neal, 1 v. p. 151-7. — [7] See the minute of the council, in Neal's N. England, 1 v. p. 153,4. — [8] Hutch. Hiſt. Maſſ. p. 32,3. — [9] Neal's N. England, 1 v. p. 158,9. — [10] Ib. — [11] Dougl. Sum. 1 v. p. 431. — [12] Hutch. Hiſt. Maſſ. 1 v. p. 35,6-94; who cites the records of the colony.

[13] At

[13] As the wiſeſt often differ, ſo the founders of nations will ſometimes diſagree. J. J. Rouſſeau inſiſts, with his accuſtomed ſpirit; that, as the ſovereignty cannot be repreſented, no ſooner are repreſentatives introduced than the ſtate is already enſlaved; that, though the Engliſh imagine themſelves free, yet, when their elections are over, they become inſtantly ſlaves: Nor does he conſider it as any objection to the aſſembling of the freemen that their numbers amount to 400,000 or more. — Social Comp. b. 4. — The wiſdom of Maſſachuſets thought otherwiſe. Though the charter, in the genuine language of that theoriſt, required the freemen to meet in perſon, yet a body of delegates that commonwealth deemed eſſential to its freedom. But this innovation was generally kept out of ſight. When the agents of the colony were preſſed, by the committee of plantations, in the year 1678, with this pointed queſtion; "how is the "general-court compoſed?" they anſwered; "of the governor, deputy-"governor, magiſtrates, and *freemen*, as by the patent is granted and "conſtituted." — Record, Plant. Off. titled N. England, 1 vol. p. 285. — The governor, writing in the name of the general-court, in the year 1680, gave the ſame anſwer to the ſame queſtion. — Ib. vol. 2, p. 40-2. — And it was not till the houſe of delegates diſſented, at an after period, from the governor and aſſiſtants, with regard to the reſignation of their charter, that it manifeſtly appeared, that the *freemen* did not vote in the general-court. — Ib. p. 197; and ſee Hutch. Hiſt. Maſſ. 1 vol. p. 339.

[14] See the original commiſſion in "the Adminiſtration of the Colonies;" and a copy in Hutch. Hiſt. Maſſ. 1 v. p. 502. — [15] Neal's N. Eng. 1 v. p. 161; Hutch. 1 v. p. 44. — [16] See the hiſtorians of New-England. — [17] Rym. Fœd. 20 v. p. 143. — [18] Ib. p. 223. — [20] Brit. Emp. Am. 1 v. p. 42. — [21] Hutch. Hiſt. Maſſ. 1 v. p. 86-7. — [22] Dougl. Sum. 1 v. p. 410; N. Eng. A. p. 222; Hutch. 1 v. p. 31. — [23] See this remarkable petition in Hutch. Hiſt. Maſſ. 1 v. Append. N° 5. — [24] Record, N. Eng. 1 v. p. 265-6, and poſt. — [25] Neal's N. Eng. 1 v. p. 184-5. — [25] Ib. 187-90. — [26] Dougl. Sum. 1 v. p. 439. — [27] Neal's N. Eng. 1 v. p. 291.

[28] Intolerance was interwoven into the frame of that government which Maſſachuſets had erected for itſelf. From the public proceedings of thoſe days, it is evident that inquiſition was made, not only into the

public declarations and practice of men, but even into their private judgements. The ministers of that sanctified region preached against toleration as a sin in government, that would bring down the judgements of heaven upon the land. Even the gentle spirit of the muses was overborne by the universal degeneracy; and, throwing their persuasive influence into the scale of persecution, they promoted the unchristian temper of the times. The following are the dying lines of governor Dudley:

" Let men of God, in court and churches, watch
" O'er such as do a toleration hatch."

Hutch. Hist. Mass. 1 v. p. 75.

If the poetry is bad the sentiment is abominable. But, let us contrast those of a poet of a different *country* and *religion*.

" For virtue's self may too much zeal be had;
" The worst of madmen is a *saint* turn'd mad." — Pope.

It was not till all had learned wisdom and moderation in the school of adversity, that they were convinced of the truth of the Christian precept, which enjoins; " that men ought not to inflict what they are not willing " to endure." The declaration of James II. for a general liberty of worship, which sapped the basis of his throne, was to them extremely welcome; and they thanked that monarch for allowing to them, what they had deemed it matter of conscience to deny to others. — Hutch. Hist. Mass. 1 v. p. 75-6; and see the fulsome addresses of the independent ministers of the colony to that prince, in N. Eng. papers, bundle 5.

[29] Neal's N. Eng. 1 v. p. 335. — [30] Hutch. Hist. Mass. 1 v. p. 32-4.

[31] See the minute of the council, and the opinion of the crown-lawyers, Dougl. Sum. 2 v. p. 337-8.

The supremacy of the crown of England, in matters ecclesiastical, is a most unquestionable right, derived from the common-law; which, as Sir Matthew Hale assures us, may be proved by records of undoubted truth and authority: — Pleas of the Crown, 1 v. p. 75: — And though, as he says, the pope made great encroachments on this authority, yet these were always complained of as illegal, and are now pared off by the statutes, 25 Hen. VIII. ch. 19, 20, 21; by 26 Hen. VIII. ch. 1. And by

by 1 Eliz. ch. 1. ſuch authority as the pope had, claiming as ſupreme ordinary, was annexed to the crown, and declared to belong thereto as of right. — See Coke's 4th Inſtitute, p. 341; Shower's Reports, 1 vol. p. 218. — No ſooner however had a right, thus unqueſtionable and important, been vindicated by the vigorous exertions of an Engliſh parliament, than freſh uſurpations of a ſimilar nature, but of very different men, commenced. The law of England, that admirable ſyſtem of reaſon and common-ſenſe, diſregarding names, generally exerts its authority over things. As it had formerly *pared off* the encroachments of the pope, upon principles equally wiſe, it now as vigorouſly oppoſed the uſurpations of the *lord-brethren* of Maſſachuſets. The pretenſions of both, equally founded in the deluſions of mankind, were equally inconſiſtent with every ſound maxim of juſt government. If the common-law, accommodating itſelf as it does to new circumſtances and ſituations, accompanies Engliſh ſubjects whither ſoever they emigrate; if, in return for their allegiance and obedience, they are entitled to protection, in war by the ſword, in peace by the adminiſtration of the laws; the conſtitutional prerogative of the crown, which is part of the common-law, muſt neceſſarily be co-extenſive with their emigrations: Hence we may infer, that the ſupremacy of the crown, or the king's eccleſiaſtical capacity, inſtantly took place with the ſettlement of the colony. This argumentation the charter of Maſſachuſets confirmed and enforced: And, by the ſolemn covenant which eſtabliſhed their church, the firſt emigrants profeſſed all lawful obedience to thoſe in authority over them in church and ſtate. But, though they admitted the validity of the principle in theory, it was inconſiſtent with the peculiar maxims of their government to have aſked the conſent or approbation of the ſupreme head, with regard to their practical deliberations. If the legality of their church-eſtabliſhment is ſo extremely queſtionable, the calling and holding of thoſe various ſynods were, ſimilar to much of the ancient adminiſtration of Maſſachuſets, mere uſurpation, as contrary to its charter, as inconſiſtent with the laws of the realm.

[31] Laws, p. 140-5; Hutch. Hiſt. 1 v. p. 117.

[33] Britt.

[33] Brit. Emp. in Am. 1 v. p. 46; Dougl. Sum. 1 v. p. 427; Neal's N. Engl. 1 v. p. 210-18.

Peters, Hibbins, and Weld, were the firſt ſtanding agents who were employed by Maſſachuſets, and ſent to England, in the year 1641. "Though their particular inſtructions have not been preſerved," the object of their agency at that critical time is now no longer a ſecret. They borrowed conſiderable ſums of money for the ſervice of that colony; and, though theſe were diſtributed by them agreeably to their orders, they were never altogether repaid. — Hiſtorical Account of Hugh Peters, p. 9; and ſee Hutch. Hiſt. 1 v. p. 98, 2 v. p. 132. — The notable talents of Peters recommended him to Cromwell as his chaplain: And, having preached the ſermon which was to prepare the minds of men for the unparallelled trial and execution of the unhappy Charles, he was condemned as a regicide after the reſtoration. It was proved on his trial, by Dr. Young, a clergyman, "that Peters had confeſſed to him, that he "was employed, out of New-England, for promoting the intereſt of "reformation, by ſtirring up the war, and driving it on." — Trial of the Regicides, p. 170. — The uſes, to which the borrowed money above-mentioned was applied, are here ſufficiently diſcloſed. Unhappy is the country, the flames of the civil wars of which are ſtirred up, not only by its natural rivals but by its own dependencies! Charles II. received notice immediately after the Reſtoration: "That a committee, on behalf "of Maſſachuſets, ſat every Saturday at Coopers-hall, for promoting "the Buſineſs which Hugh Peters confeſſed." — The information is in the N. Eng. papers, bundle 4, p. 500.

[34] Neal's New-Eng. 1 v. p. 218. — [35] Doug. Sum. 1 v. p. 431-7. — [36] Ib. 435. — [37] Ib. 438. — [38] Hume's Eſſ. 1 v. p. 72. — [39] Commentaries, 4 v. p. 9. — [40] Ordinances of New-Eng. abridg. p. 10.

[41] The Indians, who were taken, or who ſurrendered themſelves, as well in the war of the Pequots as in that of ſachem Philip, were either "ſold and ſhipped off to Bermudas and other parts, or reduced to ſlavery "in New-England." — See Hutch. Hiſt. Maſſ. 1 v. p. 307.

[42] Ordinances of New-England abridg. p. 10-12-37. — Antecedent to the civil wars, fornication and adultery were never deemed crimes by the

the law of England; they were offences of eccleſiaſtical cognizance and cenſure. Maſſachuſets, as is well known, borrowed almoſt all its priſtine inſtitutions from the Jewiſh juriſprudence: And it probably adopted the rule given by Judah in the caſe of Tamar; "bring her forth, and let "her be burnt." — Geneſ. ch. 38, v. 24. — Adultery was diſtinguiſhed into many varieties by the wiſdom of the Gentoos: And its puniſhment was moſt accurately adjuſted to the ſuppoſed guilt; extending, in ſome caſes, to the putting both the agents to death. — See Code, ch. 19.

[43] Ordin. N. Eng. abridg. p. 12. — [44] Ib. p. 13-44-5. — [45] Ib. 32. — [46] Ib. 84. — [47] Ib. 43-4. — [48] Dougl. Sum. 1 v. 433. — [49] Ib. 437.

[50] Yet it muſt be obſerved, that the attorney-general, Sawyer, at a ſubſequent period, gave it as his official opinion, "that the patent having "created the grantees, *and their aſſigns*, a body corporate, they might "transfer their charter, and act in New-England." — See Record, Plant. Off. N. Eng. v. 2, p. 101-20. — But he had probably neither peruſed it with attention, nor ſtudied its hiſtory. It conveyed the ſoil to the corporation and *its aſſigns*; it conferred the powers of government on it and *its ſucceſſors*. And to all, who have been the leaſt accuſtomed to legal or accurate reaſoning, theſe expreſſions muſt appear as different in ſenſe as they are in ſound. The two chief-juſtices, Rainsford and North, fell into a ſimilar miſtake, by ſuppoſing that the corporate powers were to have been originally executed in New-England.

CHAP.

CHAP. VIII.

New-England favours the parliament. — The commons exempt it from duties. — Commiſſioners appointed to regulate the colonies. — They are freed from taxes. — Confederacy of New-England. — Remarks. — Diſcontents in Maſſachuſets. — Conduct of the general-court. — An appeal to parliament. — The deputy-governor tried. — His ſingular ſpeech. — Maſſachuſets acts as an independent ſtate. — Gives the law to its confederates. — Foils the parliament. — Out-cants Cromwell. — He conquers Acadie. — He grants it to Saint Etienne. — Perſecutions of Maſſachuſets. — Reflections.

THE colonies of New-England, actuated by ſimilar political maxims, and profeſſing a ſimilar religion, approved as much of the pretenſions of the parliament, as they abhorred the conduct of the king. They conſidered the momentous conteſt between thoſe illuſtrious diſputants, as proceeding from the ſame cauſes which had conſtrained them to ſeek an aſylum in the wilderneſs. Their ruling men, animated with the ſame zeal, correſponded with the leaders of the parliament, and aſſured them of their inclinations, and of the prayers of the faithful for the ſucceſs of reformation: And, were they incapable of affording their friends any conſiderable aſſiſtance, the intrigues of the agents promoted the intereſts of diſcord in England.

The commons, having by their dexterity engroſſed all power, at length found leiſure to extend their protection to New-England, in return for its zealous attachment: And, with this view, they paſſed, in 1642, a memorable ordinance[1] for its advancement. In order the better to encourage the planters to proceed in their undertaking, they exempted them from the payment of cuſtoms, or other duties, on their merchandiſes exported to New-England, or imported into this realm, "till the "houſe ſhall take farther order therein to the contrary." The commons, though diſpoſed to favour the colony, were not forgetful of their own

own juſt authority: While they granted exemption, they aſſerted the general right, by ſaving the principle. When this ordinance was tranſmitted, however, to Maſſachuſets, the general-court, far from conſidering what was received rather as a benevolence than as a breach of its chartered privileges, ordered it to be entered in its records, "as a proof "to poſterity of the gracious favours of parliament."[2] Nor is this ſtrain of gratitude, which now appears ſo extraordinary in that rugged people, in the leaſt unaccountable. The patent had aſſerted a power of taxation in ſtronger language: The right of parliament was not doubted in thoſe days; and it was the irregular exertions of prerogative, and not the juſt authority of the legiſlature, that were alone dreaded as unconſtitutional, or feared as oppreſſive.

The general-court ſeized the earlieſt opportunity of making a return in ſome meaſure equal to the advantage of the benefit conferred. It paſſed an ordinance,[3] in the year 1644, declaring, "that whoever diſtur-"bed the peace of the commonwealth, by endeavouring to draw a party "under the pretence that he is for the king of England, ſhall be pro-"ceeded with either capitally or otherwiſe." But, while it courted the ſtronger party, its own intereſts were not forgotten: And, in order that the commerce of the colony might not be injured, the ſame ordinance provided, "that it ſhall not be extended againſt any merchants or ſhip-"men, albeit they come from parts in the hands of the king." How extremely different are the language and ſentiment of this law from the ſycophantic addreſs of 1638! But the coloniſts had now acquired the moſt powerful protectors: They were no longer conſtrained to uſe words which contradicted the genuine emotions of the heart: And they might have ſpoken a language of equal indifference of a ſovereign of France or of Spain.

Amid the arduous affairs, which then engroſſed the attention of parliament, the plantations did not in the mean time eſcape their notice. When they conſidered their growing importance, when they regarded their attachments, they paſſed an ordinance,[4] in the year 1643, which is no leſs remarkable for the extent of power exerted on that occaſion, than for the extraordinary regulations eſtabliſhed by it. It appointed the earl

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of Warwick governor in chief and lord high-admiral of the colonies; with a council of five peers and twelve commoners to aſſiſt him: It empowered him, in conjunction with his aſſociates, to examine the ſtate of their affairs; to ſend for papers and perſons; to remove governors and officers, appointing others in their place; to aſſign over to theſe ſuch part of the powers, that were then granted, as he ſhould think proper. Such then was the authority which the parliament alone exerted over the tranſatlantic dominions of the ſtate during thoſe days. It is apparent, that, by virtue of the powers then conferred, their various governments might have been wholly new-modelled, and their charters entirely abrogated. The coloniſts explicitly admitted its rectitude, by applying to the commiſſioners for protection and patents: And we ſhall find them in the ſequel granting both. It is recent tranſactions that have rendered the whole intereſting, by enabling the curious to compare ſpeculations with recorded facts.

The parliament, pleaſed probably with the attentions of Maſſachuſets, paſſed a new ordinance,[5] in the ſubſequent year, which exempted New-England from all taxes, "till both houſes ſhall take farther order there-"in to the contrary:" Still ſaving their own rights while they conferred favours on others. But that body at length extended their views, and enlarged the numbers who were now to partake of their bounty. They paſſed a freſh edict[6] in the year 1646, which exempted the colonies, for three years, from all tallages, "except the exciſe;" "provided their "productions ſhould not be exported but only in Engliſh veſſels." And this law is remarkable, as well for aſſerting over the plantations the parliamentary right of internal taxation, as for eſtabliſhing in part what was afterwards extended and executed by the famous act of navigation. Such then were the rules of action, preſcribed for them by the only legiſlative power then exiſting in the nation, by which regulations were eſtabliſhed, comprehending all caſes whatſoever: And theſe were conſidered by them rather as bounties conferred, than invaſions of their privileges as coloniſts, or their rights as Engliſhmen. It was impoſſible for that age to foreſee the perplexing diſputes that have ſince ariſen with regard to theſe; nor could they perhaps have been prevented had they been

foretold.

foretold. Whether modern reaſonings throw a ridicule on thoſe intereſting edicts of an aſſembly, juſtly celebrated for profound knowledge of the laws; or if the authentic facts before-mentioned expoſe recent pretenſions to the imputation of innovation, is ſomewhat doubtful: Poſterity muſt decide what at preſent are objects of diſputation.

Mean-while, the general court were neither ignorant of the intereſts of the colony nor dilatory in purſuing them. It ſaw, and dreaded, the hoſtile intentions of the neighbouring Indians. And a ſenſe of impending danger dictated the policy of forming a confederate union with the other ſettlements of New-England, in the manner of the ſtates of Holland, for the mutual defence of the whole. This meaſure being at length propoſed, after conſiderable deliberation, to the colonies of Plymouth, Connecticut, New-Haven, was approved, becauſe it appeared to them equally neceſſary and efficacious. In order to carry their intentions into effectual execution, they entered into formal articles of confederation, in May, 1643. It was agreed: That the parties to it ſhall be henceforth called "the united colonies of New-England;" that a perpetual league, for offence and defence, both for preſerving and propagating the truth and liberties of the goſpel, and for their mutual ſafety and welfare, ſhall be eſtabliſhed; that the confederates ſhall remain ſeparate and diſtinct, and each ſhall have excluſive juriſdiction within its own territory; that the charge of all juſt wars ſhall be defrayed by them, according to certain proportions agreed on; that, for the management of the common affairs, two commiſſioners, being in church-membership, ſhall be choſen by each, who ſhall have power to determine all matters of peace and war, of aids or of leagues, and, in general, of what reſpected the general intereſts: And a variety of other regulations, for the more effectual execution of the great intention of the contracting parties, were clearly aſcertained.[7] Such, then, were the terms of the firſt confederacy, to be met with in colonial ſtory. The moſt inattentive muſt perceive the exact reſemblance it bears to a ſimilar junction of the colonies, more recent, extenſive, and powerful. Both originated from Maſſachuſets, always fruitful in projects of independence. And wiſe men, at the æra of both, remarked: That thoſe memorable aſſociations eſtabliſhed a complete ſyſtem of abſo-

lute fovereignty; becaufe, the principles, upon which it was erected, neceſſarily led to what it was not the policy of the principal agents, at either period, to avow.

From the epoch of this league, the members of it were deemed, by all their neighbours, as one body, with regard to their public tranſactions, though the peculiar affairs of each continued to be managed by the magiſtrates and courts belonging to itſelf.[8] The advantages of this coalition ſeem to have been conſidered, in thoſe days, as an object of conſiderable importance: And Rhode-Iſland, petitioning to be admitted a member of it, was abſolutely refuſed, unleſs, by ſubmitting to the juriſdiction of New-Plymouth, it ceaſed to be a ſeparate ſtate; but it preferred the flattering benefits of independence to all the advantages of the union with its haughty neigbours.

The principles, upon which this famous aſſociation was formed, were altogether thoſe of independency, and it cannot eaſily be ſupported upon any other. The colonies of Connecticut and Newhaven had at that time enjoyed no charter, and derived their title to their ſoil from mere occupancy, and their powers of government from voluntary agreement. New-Plymouth had acquired a right to their lands from a grant of a company in England, which conferred, however, no juriſdiction. And no other authority, with regard to the making of peace, or war, or leagues, did the charter of Maſſachuſets convey, than that of defending itſelf, by force of arms, againſt all invaders. But, if no patent legalized the confederacy, neither was it confirmed by the approbation of the governing powers in England. Their conſent was never applied for, and was never given. The various colonies, of which that celebrated league was compoſed, being perfectly independent of one another, and having no other connexion than as ſubjects of the ſame crown, and as territories of the ſame ſtate, might, with equal propriety and conſiſtence, have entered into a ſimilar compact with alien colonies, or a foreign nation: They did make treaties with the neighbouring plantations of the French and Dutch. And in this light was their conduct ſeen in England, and at a ſubſequent period did not fail to attract the attention of Charles II.

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The union continued in force till the final diſſolution of the charters of all.

But if peace with the Indians was preſerved by the prudence or vigour of the general-court, the colony, from the extreme bigotry of its rulers, was greatly diſtracted by internal commotions. Among the emigrants thither, there were ſeveral perſons, who, not being Independents in their religion, were not admitted church-members, and, not being allowed membership, were not elected freemen; and who conſequently enjoyed no ſhare in the government. They were bound by laws, to which they had not aſſented; and they were taxed by a general-court, wherein they were not repreſented: And, having no will, they enjoyed no political freedom. To be relieved from grievances, which are ſuppoſed to have given riſe, during the preſent times, to the moſt momentous diſputes, they preſented a petition to the general-court, in the year 1645, "for "freedom of ſpeech to plead their common liberties." They complained: "That, not having a ſettled form of government, according to the "laws of England, they had not a free enjoyment of their lives, liber-"ties, and eſtates, as free-born ſubjects of England; that they were "debarred from all civil employments, and had no vote in the chooſing of "officers civil or military; that they were forced to contribute to the "maintenance of thoſe miniſters, who received them not into their "flocks, though they deſired it." They prayed: "That civil liberty "be granted to all truly Engliſh; that neither their perſons nor goods "may be impreſſed;[9] that the members of the church of England, not "ſcandalous in their lives, may be received into congregational ſocie-"ties:" Or elſe, concluded they; "we ſhall be neceſſitated to lay our caſe "before the parliament."[10] A petition, which would now appear ſo humble and ſo reaſonable, we ought naturally to infer, met with the moſt gracious attention. But no concluſion however would be more erroneous. Of thoſe petitioners, ſix were charged with great offences contained in their petition, and they were impriſoned and fined. Againſt a judgement, ſo contrary, as they conceived, to their rights as men, and to the principles of juſtice, they appealed to the parliament; but the general-court, unwilling probably to admit a meaſure ſo contrary to its views, and to its

conſtruction of the charter, refuſed the appeal. The circumſtances of that ſignal tranſaction exhibit the trueſt picture of the ancient government of Maſſachuſets, and diſplay thoſe principles of aggrandiſement which it ſeems to have had conſtantly in view, as the only rules of its conduct. The petitioners, animated by oppoſition rather than overborne by oppreſſion, reſolved to lay their deplorable condition before the ſupreme power; and two deputies, with this deſign, were ſent to England. But the governor, alarmed at this deciſive ſtep, attempted to ſeize their papers, and inſtructed Peters, Hibbins, and Weld, the agents, to counter-act their proceedings, and to anſwer their complaints. The clergy too, equally engaged in ſimilar projects, exerted themſelves on that memorable occaſion: And the famous Cotton aſſerted, in one of his ſermons; "that, "if any ſhall carry writings or complaints againſt the people of God in "that country, to England, it would be as Jonas in the ſhip." A ſtorm unfortunately ariſing, during the voyage, the mariners, often prone to ſuperſtition, recollected this ſage prediction, and inſiſted that all obnoxious papers ſhould be thrown overboard. The deputies were conſtrained to conſign their credentials to the waves. The parliament, probably influenced by the intrigues of the agents, or too much engaged in their own important affairs, took no cognizance of this extraordinary tranſaction. And the petitioners never received any redreſs." Were not ſpeculation univerſally contradicted by fact and experience, we ought naturally to find thoſe conſtitutions the moſt free in practice which are ſo in theory and name. The ancient government of Maſſachuſets adds one to the numbers, to be met with in hiſtory, which juſtify this obſervation: Under no form were ever the indifferent actions of the citizens regulated upon occaſions leſs frivolous: Under none had ever the natural rights of men been trampled on with circumſtances of greater outrage. And the tyranny exerciſed over thoſe who complained on that occaſion, becauſe they were not church-members, alone demonſtrates the truth of theſe remarks.

Winthrop, the deputy-governor, being accuſed of arbitrary conduct, with regard to thoſe complainants, was obliged to plead his own cauſe, like a criminal at the bar, before a vaſt concourſe of people; which, in that intereſting trial, had aſſembled. He was moſt honourably acquitted: But,

But, with design to rectify the opinions of men on the nature of government, he delivered a speech [12] from the bench, as remarkable for the singular doctrine it contains, as for the perfect satisfaction which it gave to the court and auditors. "The questions, said he, which have "troubled the country of late, and from which these disturbances in the "state have arisen, have been about the authority of the magistrate, "and the liberty of the people. Magistracy is certainly an appointment "from God. We take an oath to govern you according to God's law "and our own; and, if we commit errors not willingly, but for want "of skill, you ought to bear with us: Because, being chosen from a-"mong yourselves, we are but men, and subject to the like passions as "yourselves. Nor would I have you mistake your own liberty; there is "a freedom of doing what we list, without regard to law or justice; "this liberty indeed is inconsistent with authority: But civil, moral, and "fœderal, liberty, consists in every man's enjoying his property, and ha-"ving the benefit of the laws of his country; which is very consistent "with a due subjection to the civil magistrate. And for this you ought "to contend with the hazard of your lives." The sentiments of this excellent harangue [13] are all perfectly just, if we except perhaps the proposition, "that magistracy is certainly an appointment from God;" which is equally genuine also when properly qualified and understood. The opinions of that respectable magistrate, whose writings shew him to have been a man of great reach of thought, were probably derived from the sacred code, and are extremely similar to those of the Gentoos, a people of prodigious antiquity, and of admirable wisdom. But how different are these reasonings with regard to the origin and nature of government, and of the privileges of the people, from those so much inculcated of late, by the posterity of the men to whom they were delivered, "and "gave entire satisfaction." "He was chosen governor of the province "every year after as long as he lived." [14]

Massachusets, in conformity to its accustomed principles, acted, during the civil wars, almost altogether as an independent state. It formed leagues not only with the neighbouring colonies, but with foreign nations, [15] without the consent or knowledge of the government of England.

land. It permitted no appeals from its courts to the judicatories of the ſovereign ſtate, without which a dependence cannot be preſerved or enforced: And it refuſed to exerciſe its juriſdiction in the name of the commonwealth of England. It aſſumed the government of that part of New-England which is now called New-Hampſhire, and even extended its power farther eaſtward, over the province of Main: And, by force of arms, it compelled thoſe, who had fled from its perſecutions, beyond its boundaries, into the wilderneſs, to ſubmit to its authority. It erected a mint at Boſton; impreſſing the year 1652 on the coin, as the æra of independence: "Though, as we are aſſured,[16] the coining of money is the pre-"rogative of the ſovereign, and not the privilege of a colony:" Though the charter gave no ſuch authority as was given to the Virginian company by the patent of James I. Here, ſilver pieces of the denomination of ſhillings, ſixpences, and threepences, were coined; which were ordered to be good ſilver of the alloy of Engliſh ſterling money, though of leſs value than it, at the rate of two-pence in the ſhilling:[17] No other coin was allowed to paſs in that commonwealth except that of England: None were ſuffered to carry the colonial money out of that juriſdiction, except twenty ſhillings for neceſſary expences, on penalty of the confiſcation of all the viſible eſtate of the offender.[18] At a ſubſequent period, the general-court gravely juſtified this irregularity, by reverſing the maxim; that ignorance of law ſhall not excuſe. The practice however was continued till the diſſolution of its government. Thus evincing to all what had been foreſeen by the wiſe; that a people of ſuch principles, religious and political, ſettling at ſo great a diſtance from controul, would neceſſarily form an independent ſtate.[19]

A contention, which had ariſen ſome years before between that colony and Connecticut, was finally cloſed, in the year 1649: And, as it diſplays the principles of both, and is probably the firſt of provincial diſputes with regard to taxation, it merits particular diſcuſſion. The latter having impoſed a tax on the exportation of commodities from the river Connecticut, the inhabitants of a village ſituated on it, though within the limits of Maſſachuſets, refuſed to pay a duty which they deemed unjuſt. Agreeably to an article of the confederacy, Connecticut laid

laid the controverſy before the commiſſioners of thoſe colonies which were not intereſted in the diſpute. When the pretenſions of both were at length heard, in the year 1647, the former inſiſted, "that Connecti-"cut had no authority to impoſe a tax on the inhabitants of a different "colony, becauſe they were not members of its legiſlature; that the "fort, for the maintenance of which the duty had been collected, was "of no uſe to them, and therefore they derived no benefit; that, ha-"ving firſt ſettled on that river, they had been at great expence, never "expecting that ſuch a duty would ever be impoſed; and that the gene-"ral-court had the ſame right, had it the inclination, to impoſe a ſimi-"lar cuſtom on goods imported from that river to Boſton." But, a-gainſt this plauſible, perhaps juſt, reaſoning, that colony urged "the "practice of Europe; that the fort being a ſecurity to the traders, the "principle was the ſame as if the navigation had been improved, which "would create an obligation, on the part of thoſe who derived an ad-"vantage, to pay a conſideration." The commiſſioners, having adjourned in order to adviſe, ordered the tax to be collected in the mean-time. Knowing that the original could not be obtained, Maſſachuſets inſiſted that Connecticut ſhould produce its patent, to evince its authority; and a diſpute having ariſen with regard to the boundaries of the contending colonies, the commiſſioners ordered theſe to be aſcertained, and the duty to be levied as formerly. Mean-while, the former, probably ſuſpecting the partiality of the judges, or foreſeeing that judgement would be finally given againſt it, at once cut the knot which it was ſo difficult to unravel; and, in a way peculiar to itſelf, cloſed the debate: It produced an ordinance [20] of the general-court, which ordered, "that all goods any way appertaining to the inhabitants of Plymouth, "of Connecticut, or of Newhaven, that ſhould be laden or unladen "within the caſtle, ſhall pay the cuſtoms therein mentioned, on pain "of forfeiture." Though principles of retaliation might have juſtified the impoſition of a tax on Connecticut, it was aſſuredly unjuſt to levy a cuſtom on the other members of the confederacy, who acted only as umpires, in conformity to the league. Againſt a meaſure, ſo contrary to every rule of fair conduct, the confederates had nothing to oppoſe, but the

the never-failing though ineffectual expedient of the weak: They preſented a repreſentation to the general-court; in which they prayed it, "ſeriouſly to conſider whether ſuch proceedings agree with the law of "love, and the tenor of the articles of confederation." The fort, which had given riſe to this diſpute, was deſerted; the collection of the diſputed duty was diſcontinued; and Maſſachuſets, in all the pride of power, condeſcended, in the year 1650, to ſuſpend the deciſive ordinance."

That colony not only thus gave the law to its confederates, but had the dexterity to foil the long-parliament, ſo celebrated for talents and power. The committee of ſtate, having reſolved to oblige it to acknowledge their authority, by taking a new patent from them, and by keeping its courts in their name, communicated theſe intentions to the general-court. But, inſtead of complying, it tranſmitted, according to its wonted policy, a petition "to the parliament of England, the ſupreme "power." After noticing the deſire of the committee, it inſiſted, "that, "theſe things not being done or uſed, in the late king's time or ſince, "it was not able to diſcern the need of ſuch an injunction:" It repreſented, upon what conditions, and with what authority, the emigrants came thither: It reminded the parliament of their demeanour for theſe ten years, ſince the beginning of their differences with the late king, and in the war that enſued; that they had conſtantly adhered to them, without withdrawing themſelves, in their weakeſt condition and moſt doubtful times; that ſuch was the love they bare the parliament, that they were ready to ſtand or fall with them; that, for all this, they had ſuffered the hatred and threats of other Engliſh colonies, "now in re-"bellion againſt you," and alſo the loſs of divers ſhips and goods, taken by the king's party that is dead, by others commiſſioned by the king of Scots, and by the Portugals: It acknowledged the many undeſerved favours conferred upon the colony by parliament, among which are enumerated, "the taking off the cuſtoms, and the ſtopping of all appeals "from hence:" It prayed that it might not go worſe with New-England now, than in the time of the late king; and, inſtead of a governor and magiſtrates, yearly choſen by the people, to have others impoſed on them againſt their wills. The general-court at the ſame time tranſmit-

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ted a letter " to his excellence the lord-general Cromwell," to the end " that no private information might occaſion his honour to prejudice " the poor deſpiſed colony of Maſſachuſets," by inviting over many of the inhabitants into Ireland. After ſtating at large its reaſons againſt this project, which are very curious, it petitioned " his excellence to be " pleaſed to ſhew them whatſoever God ſhall be pleaſed to direct him " unto, on the behalf of the colony, to the moſt honourable parlia- " ment."

Theſe petitions, ſo characteriſtic of all the parties, did not probably give perfect ſatisfaction to the ruling powers in England. Here, a clamour, as violent as it was well-founded, had gone forth, becauſe the united-colonies, with the true ſpirit of Dutchmen, ſupplied Virginia and Barbadoes, " though enemies to the commonwealth," with great quantities of warlike ſtores and other commodities; enriching themſelves at the expence of others, who were not equally exempted from taxes. It was ſeriouſly debated, by the council of ſtate, " whether their free " cuſtoms and exciſe ſhould not be revoked:" And the uſual arguments and arts of Winſlow, their agent, were ſcarcely ſufficient to ſtop their proceedings for the preſent. And he warned his conſtituents to prevent the irregularities of merchants, and to oblige all to be careful that they did not abuſe the immunities granted by the parliament. Nevertheleſs the requiſitions above-mentioned were never complied with, and the general-court conſequently gained the point in controverſy.[22]

Not only did Maſſachuſets proudly dictate to its confederates, and artfully foil the parliament, but it out-fawned and out-witted Cromwell. Though a war had been declared by the parliament againſt the Dutch, in the year 1651, yet their colony at Manhattans, on the river Hudſon, too feeble to annoy the neighbouring confederates, requeſted the continuance of peace. It was their mutual intereſt, as they carried on an advantageous trade, and they readily granted what was now deſired. But ſoon was information brought, from all parts, by the Indians, that the Dutch were privately inciting them to commence univerſal war againſt New-England. To conſider of theſe reports, a general meeting of the members of the league was held at Boſton in the Year 1653. And, though " the

" proofs of the execrable plot, tending to the deſtruction of ſo many of " the dear ſaints of God, were ſuch as to induce a belief of the reality " of it," and the deputies were almoſt unanimous for a war againſt their neighbours, yet their reſolutions were defeated, and the aſſociation itſelf almoſt diſſolved, by a declaration of the general court, " that no de- " termination of the commiſſioners, though they all agreed, ſhall bind it to " join in an offenſive war, which ſhall appear to it to be unjuſt." Outfaced thus, and ſenſible of its danger, becauſe it was neareſt to Manhattans, Newhaven ſent agents to repreſent its unhappy ſituation to Cromwell. With his accuſtomed promptitude he inſtantly detached a few veſſels, with a ſmall number of troops, to reduce the Dutch ſettlement: and he at the ſame time recommended to Maſſachuſets to afford his officers its beſt aſſiſtance in ſo laudable an enterpriſe. All the colonies of New-England his generals[23] " found ready to aſſiſt;" but that alone. The general court purſued its uſual policy on that occaſion. It tranſmitted an addreſs to the protector, acknowledging the continued ſeries of favours, which he had conferred on the coloniſts, " poor exiles in theſe ut- " moſt ends of the earth;" informing him, that, in devotion to his ſervice, it had permitted thoſe bearing his commiſſion to raiſe five hundred volunteers for his uſe; that it had debarred the colony of all commerce with the Dutch; that it had been exerciſed with ſerious thoughts of its duty at that juncture, which were, " that it was moſt agreeable to the " goſpel of peace, and ſafeſt for theſe plantations, to forbear the uſe of " the ſword; that, if it had been miſled, it humbly craved his pardon."[24] Peace, meanwhile, was concluded with Holland,[25] and the Dutch, notwithſtanding the furious ſtorm which had threatened them, remained, till the Year 1664, in peace and ſecurity at Manhattans.[26]

The protector's officers however were actuated too much by the vigour of their maſter to remain long inactive, though that people were no longer the object of their hoſtilities. No ſooner was Acadie reſtored to France in 1632 than her ſovereign granted to De Razilly the lands around the bay and river of St. Croix. The company of New-France conveyed, in 1635, the territory on the banks of the river St. John to Saint Etienne, beforementioned, and to La Tour, the general of that colony.[27] Maſſachuſets, as well

well as the other ſettlements of New-England, beheld with regret the progreſs of the French on the adjacent coaſt, and dreaded their ultimate ſucceſs: And Sedgewicke, who was commander in chief of Cromwell's forces in New-England, was eaſily perſuaded to attack a people, whoſe religious tenets he deteſted, and whoſe country he hated. He acquired Port-royal, by capitulation, in Auguſt, 1654;[28] giving to the inhabitants liberty in their religion, and ſecurity for their property: And, on theſe conditions, Acadie ſoon after ſubmitted to his power. The French in after-times conſoled themſelves, with their uſual gaiety, that, in the whole of a tranſaction, which other nations would have conſidered as diſgraceful, the name of Nova-Scotia did not appear. During the treaty of Weſtminſter,[29] in November, 1655, their miniſters demanded reſtitution of the forts of Pentagoet, St. John, and Port-royal, which, they inſiſted, were wrongfully retained. But, on that occaſion, they met with the ſame mortification which they have but too often inflicted on others, and their pretenſions were referred to the arbitrators, who were appointed to adjuſt the damages committed on either ſide ſince the year 1640. The reſtoration of Acadie was poſtponed to future diſcuſſion.

Yet Cromwell ſeems to have had no real intention to return what his arms had conquered. For, in Auguſt, 1656, he granted,[30] under the great ſeal of England, to Saint Etienne above-mentioned, to Crown, and to Temple, for ever, the territory, denominated Acadie, and part of the country commonly called Nova-Scotia, extending along the coaſt to Pentagoet and to the river St. George. It was erected into a province, perfectly independent of New-England or any other of his dominions, of which they were appointed hereditary governors. It was required of them, however, as an expreſs ſtipulation; that they ſhould not ſuffer any ſoldiers, or any other perſons, to inhabit within the regions above ſpecified, but only thoſe, who ſhall be of the proteſtant religion, who ſhall ſubmit to the government of this republic, who ſhall obey ſuch commands as ſhall be given them by him and his ſucceſſors. And, as a farther encouragement, was conferred an exemption from all ſubſidies within the ſaid countries, as freely as other colonies enjoyed, notwithſtanding any uſages to the contrary. Thus, whoſoever governed in England,

land, whether a king, a parliament, a protector, grants of American dominions were made, authority to govern was given, exemptions from taxation were conferred. Thus for the firſt time was introduced that confuſion, with regard to Acadie and Nova-Scotia, which ſo perplexed ſtateſmen in after-times, by conſidering thoſe as two different countries that were in truth the ſame; the former containing the latter and more, and Acadie advancing weſtward till it met with the ſettlements of New-England. For it ought always to be remembered; that the ſouthern boundary of Acadie, as eſtabliſhed by the grant of Henry IV. in 1603, was the 40th degree of North latitude; that the ſouth-weſtern limits of Nova-Scotia, as appointed by the patent of James I. in 1621, was the river St. Croix. And thus was the ſtream of St. George now affixed as the outmoſt extent of both towards the South-weſt.

The addreſs above-mentioned, it ſhould ſeem, gave perfect ſatisfaction to Cromwell. For, after the conqueſt of Jamaica, with his uſual vehemence, he conceived, that the coloniſts of New-England ſhould remove thither: He thought they had as clear a call to tranſport themſelves to that iſland as had they to remove from England to Maſſachuſets; in order to the bettering of their outward condition: God having promiſed his people that they ſhould be the head and not the tail. With theſe ſage deſigns he ſent Gooken to New-England, to ſolicit the removal of the inhabitants: But he found the minds of all averſe from his propoſals, becauſe they had heard of the ſicklineſs of the climate.[31] The general-court, too ſenſible of its preſent happineſs to go in queſt of new adventures, tranſmitted an addreſs to excuſe the coloniſts, and "to beſeech "his highneſs not to impute it to them, as declining his ſervice, much "leſs as diſregarding his endeavours for promoting their welfare."[32] The winning courtſhip of Maſſachuſets ſeems to have captivated the rugged heart of Cromwell; and, notwithſtanding a variety of complaints were made to him againſt that colony, ſo ſtrong were his attachments, that all attempts, either to obtain redreſs or to prejudice it in his eſteem were to no purpoſe.[33]

Having thus, by the prudence or vigour of its councils, triumphed over its opponents abroad, the general-court had now full leiſure to turn its

its undiminiſhed wiſdom to domeſtic affairs. From the year 1650 to the Reſtoration, Maſſachuſets was chiefly employed in a buſineſs that of all others ſeems to have been moſt congenial to it; in preſerving, by perſecution, uniformity in opinion and diſcipline. The Anabaptiſts ſeparated from the congregational churches in the year 1650: Not thinking it lawful to communicate with perſons whom they deemed unbaptized. Actuated by this notion, Holmes and his diſciples withdrew from them, and eſtabliſhed a diſtinct meeting. Continuing obſtinate, though he was admoniſhed, he at length was excommunicated. And the general-court took the moſt ſpeedy courſe to ſuppreſs the growing ſchiſm. That zealot and his followers ſtill inſiſting, "that it was better to obey God than "man," and continuing in a ſtate of ſeparation, were ſentenced to various puniſhments. But the priſoners having declined to pay their fines, Holmes was publicly whipped: His friends being ſpectators of his ſufferings, praiſed God, "in the face of the people," for his courage and conſtancy. This conduct was not only deemed ſeditious, but they were adjudged, by the general-court, to ſuffer ſimilar puniſhments.[34] And theſe ſeverities were juſtified upon this principle by Mather, a famous divine of Maſſachuſets; that the ſeparation of the Anabaptiſts was a manifeſt violation of the laws of the commonwealth, concerning the orderly gathering of churches.[35] Strange! that it occurred not to the man, who had himſelf ſuffered perſecution, that this was the language of his perſecutors; that, were this reaſoning admitted, as deciſive or juſt, no diſſenting congregation could exiſt; that ſuch were the pretences which perſecution had uſed at all times and in every country. And thus, ſays Neal,[36] thoſe unhappy perſons were ſo unkindly treated, for following the light of their own conſciences, and the churches of New-England would neither ſuffer the Anabaptiſts to live quietly in their communion nor to ſeparate peaceably from them.

No ſooner was that ſect ſuppreſſed, by the ſeverity of the general-court, than the Quakers aroſe. Upon them, as upon their predeceſſors, the magiſtrates impoſed fines, impriſonments, whipping: And, when all theſe proved ineffectual, the laſt of human puniſhments was inflicted without remorſe. The firſt Quakers who appeared in New-England, arrived

rived from Barbadoes in July, 1656; and, having ſuffered five weeks impriſonment, they were ſent off by the veſſel which had brought them thither: The commander being obliged to pay the expences of their impriſonment and exportation. The ſanguinary laws againſt that ſect, which have been mentioned, were then enacted; but the ſame ſpirit, which induced that zealous people to viſit the colony, ſoon moved them to return, and to propagate their opinions, notwithſtanding the ſeverity of the laws and the frequency of puniſhment. The vigilance of that government was found inſufficient to prevent their doctrines from being adopted; and private meetings of the Friends were ſoon eſtabliſhed. Thoſe, who abſented themſelves from public worſhip, were fined; the teachers were ſent to the houſe of correction or baniſhed:[37] But all was in vain. The general-court, alarmed for that uniformity of opinion and practice which it ſo much admired, in October, 1656, enacted: "That all "Quakers, coming into that juriſdiction, ſhall, for the firſt offence, be "ſent to the houſe of correction and have one ear cut off; ſhall, for "the ſecond offence, undergo the ſame puniſhment; for the third of-"fence, ſhall have their tongues bored, and ſhall be confined till ſent "away at their own charges:"[38] And, by virtue of this abominable law, three of thoſe ſectaries actually ſuffered theſe ſevere puniſhments in September, 1658.[39] Agreeably to the wonted cuſtom of enthuſiaſts, they gloried in their ſufferings; and, as the perſecutions againſt them increaſed in extent and ſeverity, their proſelytes grew proportionally in numbers and ardour: Many of the Quakers, unable or unwilling to pay the expences of their proſecutions and exportation, "were ordered to be "ſold to any of the Engliſh plantations of Virginia or Barbadoes, to "anſwer the ſame."[40] But the general-court, in the vehemence of its zeal, ſeems not to have adverted that neither its orders nor its laws had any effect in other colonies, and that conſequently the unhappy convict could not be detained in ſervitude. The ordinances hitherto made having thus proved ineffectual, the general-court paſſed a new one; which baniſhed "all of the accurſed ſect of the Quakers," upon pain of death: And, by virtue of this law,[41] written in the genuine ſpirit of Draco, four Quakers were actually executed in the year 1659.[42] The

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ſpirit and talents diſplayed by Wenlock Chriſtiſon, on his trial, would have done honour to Sidney. Being aſked what he had to ſay, why he ought not to ſuffer the law; he inquired by what law they would put him to death? And the court anſwering, by the late ordinance made againſt the Quakers; he deſired to know who empowered them to make ſuch an edict, and if it was not repugnant to the laws of England. The governor replied, with an impertinence which ſhewed that the queſtion was deciſive, that there was a ſtatute in England to hang the Jeſuits. But, rejoined the priſoner, if you put me to death, it is not becauſe I go by the name of a Jeſuit, but of a Quaker. I appeal to the judicatories of our common country: I never read nor heard of any ſtatute that was in Old England to hang Quakers. Thus reaſon and law were pleaded in vain to judges, whoſe underſtandings were darkened by the moſt degrading fanaticiſm: And the court diſgraced itſelf by over-ruling his defence. But the exceſſive ſeverity of laws prevents their execution: And this man was pardoned and baniſhed.[43]

The abominable perſecutions of Maſſachuſets were however highly approved of by Cromwell; "who, we are aſſured, no way favoured ſecta-"ries."[44] He applauded the colony for baniſhing the evil ſeducers that had riſen up among them; ſtoutly inſiſting, that the general-court had acted like wiſe men, and God had broke the deſigns of evil inſtruments, and borne witneſs with them.[45] But if thoſe ſeverities, ſo contrary to humanity, to law, and to Chriſtianity, were not altogether prevented, they were at leaſt greatly mollified by a letter from Charles II. ſoon after the Reſtoration, to the general-court. It required, that no farther proſecutions ſhall be carried on againſt the Quakers; but that ſuch perſons may be ſent to England, to the end that they may be proceeded againſt according to the laws and their demerits.[46] Clemency is the peculiar characteriſtic of kings: Nor was it ever more laudably exerted, than in reſcuing, from the fangs of bigotry, that ſect, which did not perſecute when it acquired power.

Thus, ſays Neal,[47] the government of New-England, for the ſake of uniformity in divine worſhip, broke in upon the natural rights of mankind; puniſhed men, not for diſturbing the ſtate, but for their different religious

religious opinions. This unworthy conduct detracts from the merits of the coloniſts in atchieving the ſettlement of that country. We think with leſs aſperity of the perſecutors of ſuch men: And, when we ſee them ſtruggling with diſeaſe and with famine in the wilderneſs, we are too apt to give them leſs of our pity than humanity would otherwiſe beſtow. There is nothing more irregular than the human mind when governed by unnatural impulſes. The general-court, while perſecuting all who differed from it in opinion, religious or political, ordained, "that "all ſtrangers, profeſſing the Chriſtian religion, who ſhall flee to this "country from the tyranny of their perſecutors, ſhall be ſuccoured at "the public charge, till ſome proviſion can be made for them."[48] And that body received, with a benevolence that covereth a multitude of faults, the Scots, "whom the Lord had delivered into Cromwell's "hands at Dunbar," and who were tranſported to Maſſachuſets, to ſuffer for their own credulity, and the folly of their rulers.[49]

Notwithſtanding every infelicity and danger, the colony had extended itſelf far over the country at the Reſtoration, and the natural increaſe of its numbers was conſiderable. Two cauſes, which have at all times proved extremely favourable to the growth of ſuch eſtabliſhments, chiefly contributed to their proſperity; plenty of good land, to be obtained eaſily by all; and freedom to manage their own affairs in the manner moſt agreeable to themſelves. The people were moreover exempted from the payment of taxes, except for the ſupport of their internal government, which were very inconſiderable: And they enjoyed the extraordinary privilege of importing into England commodities free from that cuſtom, which others were conſtrained to pay. Having joined with the ſtrongeſt party during the civil wars, they enjoyed a freedom of commerce, which the other colonies, leſs temporizing, did not poſſeſs: And, being the favourites of Cromwell, the act of navigation, of which the other plantations ſo greatly complained, was not enforced againſt them, and they continued to trade whither they pleaſed. All theſe cauſes contributed to the rapid increaſe of Maſſachuſets, to that extent of numbers, wealth, and conſequence, in which the Reſtoration found it.

AUTHORITIES

AUTHORITIES AND NOTES.

[1] See a copy of this ordinance in Hutch. Hiſt. Maſſ. 1 v. p. 114,15. — [2] Ib. 114. — [3] Ib. 136. — [4] Lords Journ. 6 v. p. 291. — [5] Ib. 7 v. p. 75. — [6] Ib. 8 v. p. 685. — [7] See the articles of confederation in Neal's New-England, 1 v. p. 223. — [8] Ib. 231.

[9] In all public works, a magiſtrate had power, by his warrant, to cauſe the conſtable to impreſs labourers and artificers, and to pay them ſuch wages as he ſhould judge the work deſerved. But no one's cattle or goods might be impreſſed, except by a warrant grounded on ſome act of the general-court: And no man could be forced to go out of that juriſdiction, upon any offenſive war, except thoſe undertaken by the general-court. — Ordin. of N. Engl. abr. 57,8. — Warrants for the impreſſing of ſoldiers were to be directed to the commiſſioners of the militia, who might ſuppreſs all raiſing of men without their licence. — Ib. 74. — The conſtables were empowered to diſburſe the charges in apprehending, whipping, and paſſing, of Quakers, to be repaid out of the next county-rate; and they were authoriſed to impreſs carts, oxen, or men, for the execution of this law. — Ib. 47. — It is unneceſſary to obſerve how dreadfully men, who were obnoxious to thoſe in power, might have been oppreſſed under the authority of ſuch laws: And, accordingly, thoſe, who petitioned the general-court in 1645, complained loudly of their perſons having been impreſſed, and their goods taken forcibly from them.

[10] See the petition, in Neal, 1 v. p. 233. — [11] Ib. 233. Hutch. 1 v. p. 145. — [12] See the ſpeech, in Neal, 1 v. p. 236.

[13] It is pleaſing to contraſt the ſentiments of that remarkable ſpeech with the opinions of the Hindoos, a very ancient and ſenſible people, on this intereſting ſubject. Providence, ſays their code, created the magiſtrate for the guardianſhip of all. The magiſtrate muſt not be conſidered as a mere man; even in the caſe of the magiſtrate's being a child, he muſt ſtill be looked upon in the light of the Dewtàh (the Deity); in truth the magiſtrate is the Dewtàh in a human form, born in this world: The magiſtrate muſt never be held low and contemptible; whoſoever

vilifies and abuſes the magiſtrate ſports with his own life. Providence created puniſhment for the preſervation of the magiſtracy; if the magiſtrate inflicts puniſhment according to the Shaſter, (book of laws,) his ſubjects are obedient to his commands; if he omits to puniſh according to the Shaſter, his kingdom and his property become ruined and deſolate. — The magiſtrates ſhall not be impatient and angry at hearing any ſubject's complaints; and if any perſon, not having gained his cauſe, ſpeaks abuſively to the magiſtrate, even then he ſhall not be enraged againſt that perſon, but ſhall forgive his error. — Gentoo Code, pref. p. cx. — The ſpeech and the code equally derive government from the ſame ſource; but they draw different concluſions, according to the diſſimilar nature of their conſtitutions: The one was monarchical; the other republican.

[14] Neal, 1 v. p. 235-7. — [15] Hutch. 1 v. p. 127-32. — [16] Ib. p. 110.

[17] Douglas's Sum. 1 v. p. 433. N. Eng. Ordin. abridged, p. 78.

[18] When the project of coining money in Maſſachuſets was referred, during the reign of James II. to the officers of the mint, they reported to the lords of the committee of plantations; "that, though the general-"court had promiſed, that every ſhilling, and ſo proportionably for "ſmaller pieces, ſhould be only two-pence in the ſhilling of leſs value "than ſterling money; yet, after the ſilver was delivered to be coined, "the mint-maſter was ordered to pay it out at three-pence troy for the "ſhilling, and ſo in proportion: Now, three-pence troy is worth only "nine-pence farthing ſterling, beſides the charges of coining." — New-Eng. Entries, 2 v. p. 221-6. — The owners of ſilver were conſequently defrauded of three farthings in a ſhilling, or 22½ per centum.

[19] The following notices and papers will exhibit a genuine picture of that ſpirit of aggrandiſement, of cruelty, and uncharitableneſs, which were the real characteriſtics of Maſſachuſets during that age. Her perſecutions planted many ſmall ſettlements on the coaſt of New-England, both on her ſouth-eaſtern and north-weſtern borders. A little religious ſociety, which was called *the Grotiſts*, from the name of its leader, was received at Providence by Roger Williams, with the benevolence natural to the man, and with the attention of one who had known adverſity, and had

had himſelf wanted an aſylum. They purchaſed the lands of Shaw-omet of the ſachem of Narraghanſet, and built the town of Warwick. But Maſſachuſets, envying their repoſe, ſent commiſſioners, ſupported by an armed force, in 1643, to reduce them to obedience to her juriſdiction. — Hutch. I v. 117-23. — On that affecting emergence they publiſhed the following manifeſto, which ſhews the temper and maxims of both ſides.

" To certain men, ſtiled commiſſioners, ſent from the Maſſachuſets, now upon the way towards Shaw-omet, whoſe names we know not.

Whereas ye are ſent, by the government of Maſſachuſets, under a pretence of having things ordered among us in a way of juſtice and equity to be diſtributed among ourſelves, conſiſting, as they ſay, of Engliſh and Indians; and that upon this ground, that we have given them an invitation to that purpoſe.

Know, therefore, our whole intent and meaning therein, which may not bear any other interpretation in a rational mind, that, as they invited us unto them as clients to have our cauſes tried by them, and not as warriors to fight with them, ſo did we, and no otherwiſe, invite them: Miſtake us not therefore, neither deceive yourſelves through their or your own pretences; for, if you come to treat with us in ways of equity and peace, together therewith ſhaking a rod over our heads in a band of ſoldiers; be aſſured we have paſſed our childhood and nonage, in that point, and are under commiſſion of the great God not to be children in underſtanding, neither in courage, but to acquit ourſelves like men.

We ſtrictly charge you therefore hereby, that you ſet not a foot upon our lands in any hoſtile way, but upon your perils, and that, if any blood be ſhed, upon your own heads ſhall it be: And know, that if you ſet an army of men upon any part of our land, contrary to our juſt prohibition therein, we are under command, and have our commiſſion ſealed, all ready to reſiſt you unto death. For this is the law of our God, by whom we ſtand, which is written in all mens hearts, that, if ye ſpread a table before us as friends, we ſit not as men invective, envious, or malcontent, not touching a morſel, nor looking from you who point us unto our diſh, but we eat with you by virtue of the unfeigned law of rela-

tions, not only to ſatisfy our ſtomachs, but to increaſe friendſhip and love; the end of feaſtings: So alſo, if you viſit us as combatants, or warriors, by the ſame law of relations we as cheerfully and freely anſwer you unto death; not to kill and take away the lives of men, but to increaſe wrath and horror; the end of war, in the ſouls of all men that ſeek after it, where the peace of God appears not. And they that work otherwiſe, and anſwer not unto this law, they are not men of truth, but baſe diſſembling hypocrites, ſhadows, and abominable idols, ſet up in the form of men. — By the owners and inhabitants of Shaw-omet; the 28th of October, 1643." — From the N. Eng. pap. bund. 3. p. 6.

The vigour of this ſentiment and conduct did not, however, prove ſucceſsful. After ſome reſiſtance they were overpowered by ſuperior numbers; and Gorton, Holden, and other of their principal commanders, were taken, and impriſoned at Boſton. Gorton was accuſed "as "a blaſphemous enemy of the true religion and its ordinances, and to all "civil authority, but particularly in that juriſdiction." The general-court, with its accuſtomed ſpirit, but contrary to the declarations of the great charter of England, adjudged him "to be confined, and ſet to "work, and to bear ſuch bolts as may hinder his eſcape, during the "pleaſure of the court;" but, ſhould he break his confinement, and purſue his former conduct, then to ſuffer death. — Ib. p. 6. and Hutch. I v. 120-1.

When the royal commiſſioners arrived in New-England, ſoon after the Reſtoration, that unfortunate enthuſiaſt, who had mean-while regained his liberty, with the loſs of his eſtate, applied to them for reparation. What ſucceſs he met with, appears from the following letter of one of the commiſſioners. — From the ſame pap. bund. 3. p. 6.

"Mr. Gorton: — Theſe gentlemen of Boſton would make us believe, that they verily think, that the king hath given them ſo much power in their charter to do unjuſtly, that he reſerved none for himſelf to call them to an account for doing ſo: In ſhort, they refuſe to let us hear complaints againſt them; ſo that at preſent we can do nothing in your behalf. But I hope ſhortly to go for England, where (if God bleſs

bleſs me thither) I ſhall truly repreſent your ſufferings and your loyalty.

Boſton, 26 May, 1665. Your aſſured friend,

GEO. CARTWRIGHT."

REMARK. Conſtructive treaſon has long been exploded in our laws, becauſe inconſiſtent with the genius of freedom: Happy would it have been, for the intereſts of conſcience and true religion, had conſtructive blaſphemy never exiſted in eccleſiaſtical policy; becauſe, the writings of the ſectaries in general, during thoſe days, ſeem now utterly unintelligible.

The following paper ſhews on what conditions the inhabitants of Warwick were at length diſcharged. — From the ſame pap. bund. 3. p. 32.

" At a general-court, at Boſton, 7th of the 1ſt month, 1643-4.

It is ordered, that Randal Holden, and the reſt of that company, ſhall be ſet at liberty; provided, that if they, or any of them, ſhall, after fourteen days after ſuch enlargement, come within any part of our juriſdiction, either in the Maſſachuſets, or in or near Providence, or any of the lands of Pomham, or Sakonoko, or elſewhere within our juriſdiction, then ſuch perſon or perſons ſhall be apprehended, and ſhall ſuffer death by due courſe of law.

Per Cur.

INCREASE NOWEL, Secretary."

At a ſubſequent day Holden preſented a petition to Charles II. which, after ſtating the miſeries he had endured, " though the govern-
" ment of Maſſachuſets had nothing to lay to his charge," prayed:
" That, in regard he was about to return to his home, and might be
" driven, by ſtreſs of weather or other exigencies, into the juriſdiction
" of that colony, that his majeſty would pleaſe to command the ma-
" giſtrates to repeal the order of baniſhment." That prince, in compaſſion to his aggrieved ſubjects, and for their future ſecurity from the like

like outrages, granted the desire of the petition: He transmitted an order, in December, 1678, requiring the magistrates of his said colony to repeal the ordinance complained of, that the said persons may enjoy such liberty of free intercourse, within Massachusets, as unto his majesty's good subjects of right appertaineth. — From N. Eng. Ent. 1 v. p. 312. — The agents of that colony justified the proceedings abovementioned, by saying, among other things: — That the principal ground of the controversy was not any thing of religion, but of a mere civil nature, with regard to disputes with the Indians about lands; which might have proved of dangerous consequence to the English in general. — N. Eng. pap. bund. 3. p. 48. — What a contrast is there between the good-natured careless monarch of England and the unfeeling and interested bigots of Massachusets. When the failings of Charles II. are mentioned, it ought to be remembered, that, during his reign, he exerted himself with more than usual vigour in protecting his subjects against the injustice and oppression of that government.

[20] Hutch. 1 v. p. 154; who cites the records of the united-colonies; and see the ordinances, ib. 154. — [21] Ib. 156. — [22] Both these remarkable papers are in his Appendix, N°. 8, 9; and see Winslow's letter to the commissioners of the united-colonies, and their answer, in the collection of papers by Mr. Hutchinson, p. 228-31. — [23] The letter is in Thurloe's State Papers, 2 v. p. 420. — [24] See this singular address, in Hutch. 1 v. Append. N°. 10. — [25] Thurl. St. Pap. 2 v. 420. — [26] Hutch. 1 v. 179. — [27] These grants have been published from the Dépôt de la Marine at Paris. — [28] It has been published from the same Dépôt. — [29] Corps diplomatique, 6 v. p. 121. — [30] This curious grant has been published from the same Dépôt. — [31] Thurl. St. Pap. 5 vol. p. 5, 6. — [32] See the address, Hutch. 1 v. 190-2. — [33] Ib. 192, 3. — [34] Neal, 1 v. p. 298, 9-302. — [35] Ib. 304. — [36] Ib. 305. — [37] New-Engl. Ordin. abridg. 46. — [38] Ib. 47. — [39] Neal, 1 v. 315, 16. — [40] Ib. 323. — [41] N. Eng. Ordin. abridg. 47. — [42] The statute of 31 Hen. VIII. ch. 14. "for abolishing "diversity of opinions in certain articles concerning the Christian reli-"gion," was denominated, by the chronicles of those days, "the bloody "statute." — Observ. on the ancient Stat. p. 396. — But, though the religious

religious tenets, eſtabliſhed by that law, are either abominable or abſurd, it inflicted no puniſhment on offenders. What would thoſe ancient writers have ſaid of the ordinances of Maſſachuſets before-mentioned? — [43] Neal, 1 v. 333. — [44] Hutch. 1 v. p. 193. — [45] Ib. 192. — [46] Neal, 1 v. 335. — [47] Ib. 303. — [48] N. Engl. Ordin. abridg. p. 96. — [49] Cotton's letter to Cromwell, in the collection of papers made by Mr. Hutchinſon, p. 235.

CHAP.

CHAP. IX.

Anecdotes of Sir George Calvert. — Obtains the charter of Maryland. — Its conſtruction argued. — Diſcoveries in Cheſapeake. — The province ſettled. — Treaty with the aborigines. — Jealouſy and oppoſition of the Virginians. — The firſt aſſembly. — Cleyborne's claims. — The ſecond aſſembly. — Application to parliament againſt the charter. — Happineſs and gratitude of Maryland. — Indian war. — The validity of the charter finally decided. — A rebellion. — A ſingular law concerning religion. — The aſſembly of 1650. — The province ſubjected to the parliament; to the uſurpation of Cromwell. — Laws of the protector's aſſembly. — Diſtractions. — Reſtoration.

MARYLAND has always enjoyed the unrivalled honour of being the firſt colony which was erected into a province of the Engliſh empire, and governed regularly by laws enacted in a provincial legiſlature. The only plantations of England, which in 1632 graced the coaſts of the American continent, were Virginia and New-England. The former, originally placed under the regimen of a great commercial aſſociation, was ruled by its ordinances, by the orders of the prince, by the edicts of the governor: Nor was its political ſituation greatly meliorated by the diſſolution of the Virginian company, by the adminiſtration of Charles during the early years of his reign. The government of the latter, we have ſeen, was inveſted in a ſimilar corporation, with ſimilar powers. And a like body politic was created for the rule of Maſſachuſets, though, with a peculiar dexterity, ſhe ſoon aboliſhed her chartered conſtitution, and erected a provincial ſyſtem, ſuitable indeed to her own views, but utterly inconſiſtent with the patent.

Early in life Sir George Calvert, the projector of Maryland, was received into the patronage of that illuſtrious ſtateſman, Sir Robert Cecil, by whoſe intereſt he was made ſecretary of ſtate to James I. The friendſhip of the no leſs celebrated Sir Thomas Wentworth brought him into the parliament of 1620-1, as one of the repreſentatives for Yorkſhire.[1]

And

And, as principal manager of the intereſt of the court, we have heard him oppoſing the bill for a free fiſhing, becauſe ſuppoſed contrary to the royal authority; and inſiſting with that confidence which conviction always inſpires, that the American territory, being gotten by conqueſt, ought to be governed by prerogative as the king pleaſes. For ſuch was the faſhionable language during that and the ſucceeding reign. Sir George was one of the original aſſociates in the great Virginian company, and continued a member of that reſpectable corporation during its exiſtence.[2] And, as ſecretary of ſtate, he acted as one of the committee of council, for the affairs of the plantations, during the life of James.[3] Perfectly acquainted with affairs, and foreſeeing probably the conſiderable advantages that would accrue to his poſterity at a future period, he procured a grant of territory in Newfoundland, by the appellation of Avalon, the name of which only continued in his family till the preſent times. In the year 1622 he eſtabliſhed a ſmall but flouriſhing ſettlement in that iſland, at Ferryland, which he governed by his deputy, which he viſited in perſon in the beginning of the reign of Charles I.[4] And, in the year 1628, we have ſeen him admitted by his counſel to oppoſe the bill, brought into the houſe of commons, for a freer liberty of fiſhing, becauſe deemed by him ſubverſive of his right. But neither the climate nor the ſoil of that inhoſpitable iſland anſwered expectation. In order, therefore, to procure a ſettlement in a better land, he viſited Virginia, of the fertility and advantages of which he had heard ſo much. It was not long before he remarked, that though the Virginians had eſtabliſhed trading houſes in ſome of the iſlands, towards the ſource of the bay of Cheſapeake, they had formed no ſettlements to the northward of the river Potowmack. He determined to procure a grant of territory in that happier clime. And Charles I. with the facility of that age, readily complied with his ſolicitations. But owing to the tedioufneſs of public buſineſs, before a patent could be finally adjuſted and paſs the ſeals, that eminent ſtateſman unhappily died.[5] Theſe notices, trivial as they may ſeem, are curious and important, only as they throw light on a charter ſo famous in colonial ſtory, and enable us to eſtabliſh its genuine conſtruction.

Whatever were the real cauſes, which procured this remarkable grant, the oſtenſible motives were declared to be " a laudable zeal for extend- " ing the Chriſtian religion and the territories of the empire." And that monarch, in June, 1632, confirmed to Cecilius, now baron of Baltimore, for ever, that region, bounded by a line, drawn from Watkin's point, on Cheſapeake-Bay, to the ocean on the Eaſt; thence, " to " that part of the eſtuary of Delaware on the North, which lieth un- " der the fortieth degree, where New-England is terminated; thence " in a right line, by the degree aforeſaid, to the meridian of the foun- " tain of Potowmack; thence following its courſe, by the farther bank, " to its confluence." That a territory, thus preciſely bounded, " might " be eminently diſtinguiſhed by more ample titles, it was incorporated " into a province, and denominated Maryland:" And it was ſeparated from Virginia, and was no longer to be ſubordinate to any other colony, but immediately ſubject to the crown of England, and dependent on the ſame for ever. That nobleman was created the abſolute proprietary of it; ſaving the allegiance and ſovereign dominion due to the crown. He was empowered with aſſent of the freemen or their delegates, whom he was required to aſſemble for that purpoſe, to make laws of what kind ſoever for the province; " ſo that they be not repugnant but agreeable to " the juriſprudence and rights of the realm of England:" And the acts of aſſembly he was authoriſed to execute. Thus the powers of government, legiſlative and executive, were eſtabliſhed. That the new colony might increaſe in people, licence was given to all ſubjects to tranſport themſelves thither; and they and their poſterity were declared to be liege men of the king and his ſucceſſors, and entitled to the liberties of Engliſhmen, as if they had been born within the kingdom. They were enabled to carry any merchandiſes to the province, paying the uſual cuſtoms; and to import into England and Ireland its productions, rendering ſuch taxes as other ſubjects ſhould be obliged to contribute. Power was given to the proprietary, with the aſſent of the people, to impoſe ſubſidies there, upon juſt cauſe and in due proportion; which were granted to him for ever: And there was a covenant on the part of Charles, that neither he nor his ſucceſſors ſhould, at any time, impoſe, or cauſe

to

to be impoſed, any tallages on the coloniſts, or their goods and tenements, or on their commodities, to be laden within the province. Thus was conferred on Maryland that exemption for ever, which had been granted to other colonies for years. This region was erected into a palatinate, and the proprietary was inveſted with all the royal rights of the palace, as fully as any biſhop of Durham had ever enjoyed: And he was authoriſed to appoint officers, to repel invaſions, to ſuppreſs rebellions. The advowſons of thoſe churches, which ſhould be conſecrated according to the eccleſiaſtical laws of England, were granted to him. Power was given to erect ports; but with an expreſs ſaving of that right, which the commons had ſo long contended for, of fiſhing within the various bays, harbours, and creeks, of the province. And the charter finally provided, which was of great importance, that, ſhould any doubts ariſe concerning the true meaning of it, ſuch an interpretation ſhall obtain as is moſt favourable to the proprietary; yet, that no conſtruction ſhould be made whereby the Chriſtian religion, or the allegiance due to the crown, ſhall ſuffer any diminution.[6]

But it muſt be obſerved, that, in this patent, there is no clauſe which obliges the proprietary to tranſmit the acts of aſſembly to the king, for approbation or diſſent; nor any ſaving of the royal interference in the government of the province. Theſe eſſential omiſſions induced the commiſſioners of plantations to repreſent to the commons, in 1733;[7] "that "Maryland is under no obligation, by its conſtitution, to return au- "thentic copies of its laws to the ſovereign, for confirmation or diſal- "lowance; or to give any account of its proceedings." Nothing can afford more deciſive proof, than theſe material omiſſions, that Sir George Calvert was the chief penman of the grant. For the rights of the proprietary were carefully attended to, but the prerogatives of the crown, the rights of the nation, were in a great meaſure overlooked or forgotten. And an act of parliament was about the ſame time propoſed as the only remedy for thoſe defects, which the improvidence of Charles I. had created.

Such then is the ſubſtance of this remarkable charter, which appears to have been drawn with great preciſion and ability. The powers given

to the proprietary are extremely large; the privileges conferred on the people are aſſuredly ſuperior to thoſe granted to other coloniſts: And there is a covenant on the part of the king and his ſucceſſors, which is to be met with in no other colonial patent, which has given riſe, during the preſent days, to a claim of exemption from parliamentary taxation. But well may be queſtioned the validity of a pretenſion ſo extraordinary and novel. For it ſuppoſes that prince to have transferred a power which the conſtitution had cautiouſly refuſed to the ſupreme executive magiſtrate:[8] And it will be eaſily admitted, that one cannot give generally that to another which he does not himſelf poſſeſs. The monarchy of England had been at all times circumſcribed by a limited conſtitution, though the privileges of the different members of the great body politic of the ſtate had been variouſly modified, at different and diſtant periods of her annals. But, when kings aſcended the throne, who attempted to exalt the prerogative upon the ruins of national liberty, either Engliſh barons or Engliſh commons ſufficiently aſſerted the nature of the conſtitution, by the great charter, by its various confirmations, by the petition of right, which had been juſt wrung from the miſguided Charles. No epoch, therefore, can be aſſigned in the hiſtory of England, when the king poſſeſſed the right, which had been ſometimes exerted without it, of taxing the people, except with the national conſent. And a privilege, thus ancient and important, the commons declared and enforced, when they reſolved, in April, 1628: "That it is the undoubted right of the "ſubject, that no tax, or benevolence, or tallage, can be levied by the "king, or any of his miniſters, without common aſſent, by act of par-"liament."[9] The inhabitants of Maryland, continuing, when they emigrated, Engliſh ſubjects, were entitled to the protection of Engliſh laws, and to the enjoyment of Engliſh liberties: They could no more conſequently be ſubjected to taxes impoſed, or to rules preſcribed, by the royal prerogative alone, than could the people of England. And the covenant before-mentioned was merely declaratory therefore of the ancient conſtitution, and granted nothing more than they were already entitled to poſſeſs from the common-laws of the realm. But, as the king could not diveſt the people of any one privilege, ſo neither could he transfer any

any one right of the legiſlature. For, being only one conſtituent member of the ſupreme power, he muſt be ſubordinate to himſelf in parliament, the great body politic of the empire, and can alone perform no legiſlative act. And it is altogether incongruous, and contrary to principle, to argue, that the rules of action, preſcribed by the inferior, can bind the ſuperior perſon or ſtate.

An exemption, nevertheleſs, from parliamentary taxation or legiſlation, was not probably within the contemplation of the parties to the charter of Maryland. All former colonial grants had conferred freedom from impoſts for limited times; which, in the opinion of the grantees, plainly ſuppoſed, that the right to exert the authority, when the period of exemption was expired, to exiſt in the grantors. And the rule of James and Charles, equally unconſtitutional and vexatious, was exerciſed over every dependency of the crown, agreeably to the principle that had been reſerved: They impoſed taxes, without the conſent of the people or the parliament, over Ireland [10] as well as the American plantations. And the governor of Virginia followed their example, till checked by an act of aſſembly. Of all theſe circumſtances Sir George Calvert was perfectly informed; becauſe, as ſecretary of ſtate, he had the beſt intelligence, and none had more zealouſly defended in parliament thoſe exertions of prerogative, as equally legal and juſt. That ſagacious ſtateſman had beheld the arbitrary adminiſtration of the colonies during thoſe days; and now, when out of power, he dreaded a continuance of a mode of government, over his intended ſettlement, which he had formerly ſupported with regard to others. To guard againſt the irregularities of prerogative, therefore, and not the conſtitutional authority of parliament, he procured, with that caution which experience inſpires, the various clauſes before-mentioned to be inſerted in his patent. And from all ſuch taxation, and even legiſlation, the people of Maryland were moſt aſſuredly exempted.

Thus was the charter of that province obtained; and ſuch is its genuine conſtruction. The wiſdom and vigour of lord Baltimore ſucceſſfully performed what the colonial companies had been unable to atchieve. And, at an immenſe expence, he eſtabliſhed a colony; which, after va-

rious

rious revolutions, has deſcended to his poſterity, and has added to the importance and power of the Engliſh empire.

From the date of the original diſcovery of Smith, the Virginians were too much occupied, for ſeveral years, either in procuring food or in defending themſelves againſt the attacks of a ſubtle enemy, to find leiſure to explore more minutely the capacious Cheaſapeake, ſo juſtly praiſed for beauty and commodiouſneſs. John Pory however ſailed, during the year 1620, into the great bay northward; and, though he did not penetrate to its ſource, he diſcovered, as he aſſures us, one hundred Engliſh happily ſettled, who were animated with the hope of a very good trade of furs. He adventured ſoon after ſixty miles over land, through a pleaſant and fruitful country to the South river. And, on its margin, he was received with friendly entertainment by the ruling ſachem of the land, who ſeemed extremely deſirous to enter into a league of amity and commerce with the Virginians." Thus neither the French, nor Dutch, nor Swedes, poſſeſſed then any ſettlements on the banks of the Delaware; becauſe Pory muſt have either ſeen traces of their poſſeſſion, or at leaſt heard ſomething of their renown. From the acceſſion of Charles I. ſimilar diſcoveries were made with greater frequency and diligence, becauſe that prince inſtructed the governors of Virginia to procure exact information of the rivers and the country." In May, 1631, he granted a licence, under the ſign-manual, to William Cleyborne, who was deſcribed as one of the council and ſecretary of ſtate of Virginia, "to traffic in thoſe "parts of America for which there is already no patent granted for ſole "trade." [13] And Harvy, the captain-general of Virginia, in the beginning of the ſubſequent year, enforced what his ſovereign had commanded. [14] Cleyborne and his aſſociates, with the ſpirit of excluſion, which was ſo common in thoſe days, and which prevails in every country during the infancy of its commerce, attempted to monopolize the trade of Cheaſapeake. And with this intention a ſmall colony ſeems to have been planted on the iſle of Kent, which is ſituated in the center of Maryland, and now graces that admirable bay, where it waſhes Annapolis, its preſent capital. The Virginians boaſted, in after-times, with their wonted pride, that the coloniſts of Kent ſent burgeſſes to their aſſembly, and

were

were ſubjected to their juriſdiction before Maryland had a name." This province found abundant cauſe to regret, that a people had neſtled within its limits who paid unwilling obedience to its laws.

The firſt emigration, conſiſting of about two hundred gentlemen of conſiderable fortune and rank, with their adherents, who were compoſed chiefly of Roman-catholics, ſailed from England, in November, 1632: And, after a proſperous voyage, landed in Maryland, near the confluence of the river Potowmack, in the beginning of the ſubſequent year. Animated by very different principles, Calvert, their leader, purſued a very different conduct from thoſe who firſt planted the ſhores of James-River. He purchaſed the rights of the aborigines for a conſideration which ſeems to have given them ſatisfaction; and, with their free conſent, in the ſubſequent March, he took poſſeſſion of their town, which he called Saint Mary's. Prudence as well as juſtice dictated the continuation of this ſalutary policy with regard to that people; and, having carefully cultivated their friendſhip, he lived with them on terms of perfect amity, till it was interrupted by the intereſted intrigues of an individual. The providing of food and habitations muſt neceſſarily have engroſſed much of the attention of the firſt emigrants: Nor would legiſlative regulations be extremely wanted while their numbers were few, and their minds ſo uſefully occupied. And they lived, for ſome time, rather under the domeſtic regimen of a family than according to the diffuſive regulations of a provincial eſtabliſhment. The lands, which had been thus ceded to them, were planted with facility, becauſe they had already undergone the diſcipline of Indian tillage, and they had prudently commenced their ſettlement at that ſeaſon when the operations of agriculture naturally begin. Food was, therefore, eaſily provided for thoſe whom they expected to follow them from England. And the Roman-Catholics, unhappy in their native land, deſirous of a peaceful aſylum in Maryland, emigrated in conſiderable numbers. Now Lord Baltimore laid the foundation of his province upon the broad baſis of ſecurity to property, and of freedom in religion; granting, in abſolute fee, fifty acres of land to every emigrant; eſtabliſhing Chriſtianity agreeably to the old common-law, of which it is a part, without allowing pre-eminence

nence to any particular ſect. The wiſdom of his choice ſoon converted a dreary wilderneſs into a proſperous colony, becauſe men exert themſelves in every purſuit only in proportion as they are aſſured of enjoying in ſafety what they wiſh for the moſt. The tranſportation of people and neceſſary ſtores and proviſions, during the two firſt years, coſt that nobleman upwards of forty thouſand pounds; which, if eſtimated according to the then value of money, and the price of all things, muſt be allowed to have been a conſiderable ſum. The freemen of the province thought ſo. For, even during the young and poor eſtate of the colony, they granted him a ſubſidy of fifteen pounds of tobacco on every poll, "as a teſtimony of their gratitude for his great charge and ſolicitude in "maintaining the government, in protecting the inhabitants in their "rights, for reimburſing his vaſt charge."[16] And this donation does equal honour to both: Becauſe it ſhews that the one had merited; that the others were grateful.

From Virginia, which had now been ſettled ſeven and twenty years, the emigrants derived many of the benefits, and ſome of the diſadvantages of neighbourhood. They procured ſome little ſupplies for domeſtic wants: But they were conſidered as intruders on another's territory, and as the obſtructors of that traffic which had been long exerciſed for the relief of the neceſſities of others. They were received, therefore, by the governor and council of that moſt ancient dominion, with that cold civility which proceeded from the commands of their common ſovereign; who, "deſirous to encourage the noble purpoſe of Lord Baltimore, re-"quired that all lawful aſſiſtance ſhould be given him, in ſeating him-"ſelf and his aſſociates in Maryland."[17] But, though that government, "in humble ſubmiſſion to his majeſty's pleaſure," determined, in March, 1633-4, "to obſerve all good correſpondence with them," it reſolved "to maintain the rights of the prior ſettlement." Happy that both owned one common ſovereign, to whom both ſubmitted the deciſion of their mutual diſputes!

Mean-while, a petition of the planters of Virginia was preſented to Charles I. remonſtrating againſt "ſome grants of a great portion of "lands of that colony, ſo near their habitations as will be a general diſ-

"heartening

" heartening to them, if they ſhall be divided into ſeveral governments." Lord Baltimore, as well as the petitioners, was heard in ſupport of their different pretenſions. They were ordered to accommodate their controverſy in a friendly manner, and to ſet down in writing the propoſitions made by each party. But, as the validity of his charter was queſtioned, this was not a diſpute that could be compoſed by amicable treaty. And the privy-council, having, in July, 1633, heard whatſoever was alledged on each ſide, thought fit to leave that nobleman to his patent, and the complainants to the courſe of law. Yet, for the preventing of farther differences, their lordſhips ordered; that free and mutual commerce ſhall be permitted; that neither colony ſhall receive any fugitive perſons from the other, or do any act which may bring on a war with the natives; and that both ſhall, on all occaſions, aſſiſt each other in ſuch manner as becomes fellow-ſubjects of the ſame ſtate.[18] The wiſdom as well as equity of the deciſions of the privy-council, with regard to Maryland, may be attributed to the preſence of Lord Strafford, who was the friend of Sir George Calvert, and extended his protection to the ſon, becauſe he recollected the good offices of the father. But intereſt is an obſtinate paſſion: And we ſhall find, that a determination ſo prudent and wiſe was attended with little good effect; it neither procured conviction, nor enforced obedience.

William Cleyborne continued to claim Kent-iſland, for no better reaſon than becauſe he had received a licence under the royal ſign manual to traffic; and he refuſed his ſubmiſſion to the juriſdiction of Maryland, becauſe the government of Virginia, " knowing no reaſon why the " rights of that place ſhould be rendered up," countenanced his oppoſition. Yet againſt the charter it was never objected, that it was unfairly obtained. For in thoſe days it was only ſaid, what indeed was true, that there was already a ſmall ſettlement of Virginians within the limits of the grant. But the ſoil belonged to the king, which he might therefore convey to another: The powers of government had flowed from him, and he might conſequently confer them on one whom he thought worthy of truſt. And this tranſaction offers the firſt example, in colonial ſtory, of the diſmemberment of an ancient colony, by the formation of a new

province, with ſeparate and equal rights. It was reſerved for modern times to diſcover, what had not occurred to contemporary men and parties, that there were then rightly ſettled, on the banks of the Delaware, within the boundaries of Maryland, plantations of Dutch and Swedes, whoſe ſettlements had been concealed from the king with a criminal intention, which invalidated the royal purpoſe. Lord Baltimore, however, animated as well by a conſciouſneſs of his own powers, as by the authority of the judgement before-mentioned, gave orders, in September, 1634, to ſeize Cleyborne if he did not ſubmit to his government;[19] judging, wiſely, that ſubordination would ceaſe, ſhould an independent juriſdiction be eſtabliſhed in the center of his province.

The firſt aſſembly, of which any record remains, compoſed probably of the whole freemen of the province, becauſe their numbers were few, convened in February, 1634-5. Little of their proceedings are now known. Yet certain it is that, "among other wholeſome laws," it was then enacted, "that offenders, in all murders and felonies, ſhall ſuffer "the ſame pains and forfeitures as for the ſame crimes in England."[20] Thus the provincials, whoſe minds were not vitiated by fanatic notions of ſuperior ſanctity or knowledge, wiſely decided, that the laws of England are the moſt proper rules of action for Engliſhmen. The acts of this firſt aſſembly were tranſmitted to the proprietary for his aſſent, who probably did not altogether approve of them, becauſe he tranſmitted, not long after, a code compoſed by himſelf, which was in its turn diſapproved of by the freemen.

Cleyborne, who ſeems to have been born to be the bane of Maryland, was too intereſted to relinquiſh his pretenſions, and too proud to own the authority of an infant province; the powers of which he therefore probably derided. He ſcattered jealouſies among the aborigines, perſuading them, that the "new-comers" were Spaniards, and enemies to the Virginians: He infuſed his own ſpirit of diſobedience into the inhabitants of Kent-iſland: And he was at length indicted, and found guilty of murder, piracy, and ſedition: But he fled from juſtice, and his eſtate was ſeized, as forfeited to thoſe laws which he had formerly contemned as invalid.[21] By a ſingular reverſe of fortune, this man lived to command

command in the province whence he was now driven with infamy, to feel the pangs of old age when accompanied with poverty, to apply to a prince for ſupport, whoſe beneficence was not even extended to thoſe who had ſuffered for his family and himſelf.

As emigrants arrived, and extended themſelves at a greater diſtance from St. Mary's, their metropolis, legiſlative regulations became more neceſſary. In order chiefly to procure the aſſent of the freemen to a body of laws which the proprietary had tranſmitted, Calvert, the governor, called a new aſſembly, in January, 1637-8. But, rejecting theſe with a becoming ſpirit, they prepared a collection of regulations, which demonſtrate equally their good ſenſe and the ſtate of their affairs. The province was divided into baronies and manors; the privileges of which were carefully regulated. A bill was paſſed, "for ſettling the glebe." Others were enacted, "for the liberties of the people," and "for ſwear-"ing allegiance to their ſovereign." The intereſts of property were properly attended to: Paſſing bills "for aſſurance of titles to lands and "regulating their mode of deſcent," and "for ſucceſſion of the goods "of the deceaſed inteſtate." The law, both "for civil cauſes," and "for crimes," was aſcertained. The planters of Maryland ſeem to have equally adopted tobacco as a favourite, and to have applied to the production of it with that anxiety which the hope of preſent gain always inſpires, and it had already become the meaſure of commerce: Laws were therefore paſſed, "for the payment of tobacco, for the planting "of corn." And a variety of other regulations of domeſtic œconomy and of commerce were eſtabliſhed. When the freemen reflected on the crimes of Cleyborne, that he had committed as well divers felonies as ſeditions, had exerciſed government within the province without authority, and had practiſed with the Indians for the deſtruction of the colony; they paſſed an act for his attainder, becauſe he had been indicted and fled from juſtice. And, when they remembered "the vaſt charge" of the proprietary, they framed a bill "for his ſupport." The various proceedings before-mentioned "were never, as we are aſſured, enacted "into laws, nor are any copies of them, or of thoſe ſent from Eng-"land, to be found in the provincial records."

Cleyborne was not only too ſpirited, but relied too much on powerful ſupport, to ſubmit quietly to an expulſion, which he deemed ſo oppreſſive and unjuſt. He complained to his ſovereign of the wrongs that had been done him, and prayed for a confirmation under the great ſeal of his former licence, for a grant of other lands adjoining to the iſle of Kent, with power to govern them. Partly by miſrepreſentation, but more by the influence of Sir William Alexander, he procured, in July, 1638, a royal order to Lord Baltimore;[23] commanding him, to allow the planters and their agents, before-mentioned, to enjoy their poſſeſſions in ſecurity till theſe conteſts ſhould be finally decided. That nobleman, with an attention which he deemed due to the commands of his prince though founded on miſinformation, ſaid; that he would wait on the king, and give him perfect ſatisfaction.[24] The lords commiſſioners of colonies, to whom this tedious controverſy was referred, after hearing all parties, in April, 1639, adjudged:[25] "That the lands in queſtion abſolutely be-"longed to Lord Baltimore, and that no plantation, or trade with the "Indians, ought to be allowed, within the limits of his patent, without "his permiſſion; that, with regard to the violences complained of, no "cauſe for any relief appeared, but that both parties ſhould be left to "the ordinary courſe of juſtice." The principle of this deciſion ſtrikes deep into the validity of the patents of Nova-Scotia, paſſed under the great ſeal of Scotland in 1621-25; becauſe the privy-council allowed no force to a licence under the privy ſignet of that kingdom, when pleaded againſt a grant under the great ſeal of England. Yet, it is to be lamented, that ſimilar adjudications have not been at all times perfectly uniform, and, with a ſpirit of inconſiſtence which equity reprobates, different men have received different meaſures of juſtice. Yet that contentious diſputant was as little ſatisfied with the preſent as the former judgement againſt him, becauſe he probably derided the authority of the privy-council: And, though his own pretenſions gave him no title, legal or equitable, he carried on intrigues in Maryland, which produced events that ſhe afterwards feelingly deplored.

Mean-while, the affairs of the province requiring farther regulation, a third aſſembly was held at St. John's in February, 1638-9. And now a change

a change of conſiderable conſequence enſued. While the paucity of their numbers continued, the whole freemen ſeem to have conſented in perſon to every law: But now an act was paſſed "for eſtabliſhing the houſe "of aſſembly." It enacted; that thoſe, who ſhall be elected purſuant to writs iſſued, ſhould be called burgeſſes, and ſhall ſupply the place of the freemen who choſe them, in the ſame manner, and to the ſame intents, as the repreſentatives in the parliament of England; that the gentlemen ſummoned by the ſpecial writ of the proprietary, and thoſe freemen who ſhall not have voted at any of the elections, together with the governor and ſecretary, ſhall be called "the houſe of aſſembly;" that all acts, aſſented to by that body, ſhall be deemed of the ſame force as if the proprietary and freemen had been perſonally preſent. The legiſlative power being thus created, the aſſembly paſſed what ſeems to have been intended to form a code of laws, till a complete ſyſtem of provincial juriſprudence could be eſtabliſhed. "Holy church within this pro-"vince, ſaid the good Catholics, ſhall have all her rights and liberties."[20] It is remarkable enough, that theſe expreſſions were copied literally from the great charter of England, and its ſubſequent confirmations; and it is no leſs ſingular, that almoſt all the compilations of ancient laws, particularly the Scottiſh, contained a ſimilar proviſion in favour of the church: And we are aſſured, this ſignal attention to the intereſts of religion proceeded from a laudable jealouſy of the papal juriſdiction. But what the franchiſes of the church of Maryland were do not appear, and probably the wiſeſt of her doctors would have been puzzled to tell. This act, however, was re-enacted in the ſubſequent year: It was confirmed, in 1676, as a perpetual law; though the province was not divided into pariſhes till after the Revolution. From the church the aſſembly naturally turned its next regard to the intereſts of the ſtate. All inhabitants were required to take the oath of allegiance to his majeſty; the prerogatives of the proprietary were recogniſed: And it was declared, that the coloniſts ſhall enjoy their liberties according to the great charter of England. The acts of aſſembly of Maryland demonſtrate, that none of the Engliſh provincials better underſtood the nature of their rights, or were more ready to acknowledge their duties, than were the people of that

province,

province. In this one law is pointed out, in language the moſt unequivocal, their conſtitutional connexions with the ſovereign ſtate: They ſwore allegiance to the king, as he ſtood related in his political capacity to the Engliſh nation; they ſubmitted to the prerogative of their lord paramount, becauſe the charter gave what they could not deny without impeaching their own powers; they inſiſted on enjoying the ſame privileges as they had formerly poſſeſſed, as far as they could poſſibly exerciſe them in their new ſituation. And here we diſcover no one principle of independence. Every thing neceſſary followed from the aſſertion: "We are "Engliſhmen." Yet Sir Thomas Trevor, the attorney-general, during the reign of William III. we ſhall hear gravely reporting; that he knew not whether the great charter had ever been extended to Maryland, or whether it was proper to allow the people there the various privileges contained in it. It was by the ſame law enacted; that juſtice ſhall be adminiſtered according to the acts and uſages of the province, or otherwiſe agreeably to the laws and laudable cuſtoms of England: Thus wiſely engrafting the juriſprudence of the kingdom into that of the colony. At the ſame time that the planting of corn was enforced, a cuſtom of five in the hundred of the value was impoſed on the exportation of tobacco, except to England, Ireland, or Virginia. We have already ſeen the freemen, when convened in perſon, grant a tax for the ſupport of the proprietary; every man giving a part of what he poſſeſſed, becauſe he felt the bleſſings of ſecurity and protection: And now, when the aſſembly poſſeſſed all the powers of the freemen, it equally granted a cuſtom for ſimilar reaſons, to be applied to ſimilar uſes. Here we trace the origin of the right of taxation in all countries on earth: And what man will aſſert, that the duty impoſed by the aſſembly was not as conſtitutional and juſt as that impoſed by the freemen, who might ſurely give away what belonged to themſelves. We may eaſily eſtimate the numbers, and wealth, and power, of a people, who think it neceſſary, by general contribution, "to erect a water-mill for the uſe of the colony." It is in the laws of an infant people that we trace their principles and diſcover their policy. Slavery ſeems to have rooted in Maryland with the original emigration:

emigration: Becauſe an act of this aſſembly deſcribes "the people" to conſiſt of all Chriſtian inhabitants, "ſlaves only excepted."[27]

While the legiſlature was thus endeavouring with a laudable anxiety to promote the intereſt of the province; while it proſpered extremely under the influence of thoſe ſalutary regulations; freſh attempts were made in England to diſturb the general repoſe. As the validity of the charter had ſtood the teſt of the ſevereſt trials, as it had acquired ſtability from oppoſition, a freſh attack was now made on different ground. It was not difficult in thoſe days to procure "prime lawyers" who gave it as their opinion, that the ancient Virginian patents ſtill remained in force, notwithſtanding the judgement of the courts of juſtice, and the length of acquieſcence; and who thence inferred, that the grant of Maryland was void, becauſe it gave away to one what had formerly been conferred on many. In the beginning of the parliament, which aſſembled in 1640, an attempt was made to eſtabliſh once more over Virginia the government of the ancient corporation; and thereby to annul the charter of Maryland.[28] But owing partly to the vigorous oppoſition of the aſſembly of that ancient dominion, which had now learned, from experience, that more real liberty was enjoyed under any form than beneath the rule of a commercial company, but more to the injuſtice and difficulty of the meaſure, that project was dropped: And thus, what commenced in wickedneſs ended in diſappointment.

Never did a people enjoy more real happineſs, or were more grateful for it, than were the inhabitants of Maryland under Cecilius, the excellent founder of that province. We have already ſeen them eſtabliſh taxes, to reimburſe in part his vaſt charge, and to ſupport his government. During the ſeſſion of October, 1640, they conferred on the proprietary "all "uncertain goods, to which no party juſtly claimeth right." The ſpirit which the emigrants diſplayed on all occaſions, as well as their legiſlative talents, evince, that they underſtood their own intereſt, and purſued it; that, while they cheriſhed the juſt prerogative of the proprietary, they never loſt ſight of the rights of freedom. The conſtitution was now farther improved by providing a remedy againſt the evils of a ſuſpenſion of government, in caſe of the death of the lord palatine. Among other laws

laws of domeſtic œconomy, which were then paſſed, one is remarkable, becauſe it has been properly denominated "their ancient inſpection law," which eſtabliſhed many ſalutary regulations for the improvement of the ſtaple of the colony, and the protection of purchaſers from frauds.[29] But from legiſlative regulations, which are intereſting only as they illuſtrate the progreſs of laws, and diſplay the purſuits of a people during their early years, the attention of the coloniſts was not long after turned to more active ſcenes.

The wiſe and prudent meaſures of the governor, with regard to the Indians, had hitherto enſured a peace which had proved extremely beneficial to the province during its weakneſs. The intrigues of Cleyborne, however, infuſed a jealouſy that was never altogether eradicated; they ſaw what muſt have at all times given them the greateſt uneaſineſs, though they could not avow it, that rapid increaſe of the ſtrangers, which threatened their own annihilation as a people; individuals procured donations of their lands, without the authority of government, for conſiderations which were extremely inadequate; and which, upon reflexion, muſt have given them the greateſt diſſatisfaction: All theſe cauſes brought on an Indian war in the beginning of the year 1642. It continued, for ſeveral years to adminiſter its accuſtomed evils, though attended with no circumſtance of advantage or glory. And a peace was at length concluded on the uſual conditions, of preſent ſubmiſſion and of future amity. Laws were ſoon after made to prevent the exiſtence of the ſame cauſes in ſucceeding times. All acquiſitions of lands from the aborigines, without the conſent of the proprietary, were declared illegal and void; becauſe they were deemed equally prejudicial to his dignity and rights, as of dangerous conſequence to the ſafety of the people. It was made "felony of death" for any perſon "to ſell or tranſport any friendly indians." And it was declared to be highly penal to deliver any arms or ammunition to them.[30] Theſe ſalutary regulations, with the prudent conduct of the governor, preſerved a long peace with that people, which proved extremely advantageous to both.

The public tranquillity was ſcarcely reſtored, when it was diſturbed by miſchiefs of greater magnitude and of more malignant conſequences.

The

The reſtleſs Cleyborne was no-wiſe diſcouraged by the various defeats which he had received. As he no longer hoped for any advantage from the regal government in England, he lent his aid to the opponents of it. Actuated partly by the deſire of recovering what he deemed his right, perhaps more by revenge, he continued his intrigues in Maryland. He was naturally joined by Richard Ingle, who was of conſequence enough to be proclaimed a traitor againſt his king, in July, 1643, and who was animated by ſimilar paſſions. Theſe men, aided by the turbulent ſpirit of the times when the minds of all were rouſed from their uſual repoſe, and ſupported by thoſe who in every country wiſh for change, had the influence to raiſe a rebellion in that province, in the beginning of the year 1645. Calvert, the governor, unſupported by any real power, was conſtrained to flee into Virginia for protection. The adminiſtration, which he had been conſtrained to relinquiſh, they inſtantly ſeized on as fallen to them; which they exerciſed with the accuſtomed violence of the rebellious: And, notwithſtanding his moſt vigorous exertions and the aſſiſtance of the well-affected, the revolt was not ſuppreſſed, nor quiet once more eſtabliſhed, till Auguſt, 1646. The calamities of that period are ſufficiently deſcribed by the aſſembly, when it aſſures us, "that "the province had been waſted by a miſerable diſſenſion and unhappy "war, which had been cloſed by a happy reſtitution of a bleſſed peace." In order to reſtore general tranquillity by quieting the minds of the inhabitants, an act of oblivion was paſſed: It granted a free pardon of all offences committed during the rebellion by any perſons whatſoever; except Ingle, and a few others of the iſle of Kent, who had not been previouſly pardoned by the governor: It diſcharged all actions for wrongs done during the revolt: And, to prevent the return of thoſe evils which the legiſlature ſo much lamented, it paſſed "an act, prohibiting all com-"pliance with William Cleyborne, in oppoſition to the proprietary's "right and dominion." [31]

But all the bad conſequences of this inconſiderate inſurrection did not end here. The aſſembly, which convened in April, 1649, granted the proprietary a cuſtom of ten ſhillings a hundred on tobacco which ſhould be exported by any Dutch ſhip for ſeven years: The one half of this

duty was appropriated "towards the ſatisfaction of all claims touching "the recovery and defence of the province;" the other was abſolutely conferred on him; giving a reaſon, which ſhews as well the ſtate of their own minds as of the colony, "that the proprietary might better per- "ceive the good-will of the freemen in complying with him as far as "their poor diſtracted condition could well bear, and to the end that he "might be the better enabled to protect them in their lives, liberties, "and eſtates." An aſſeſſment on the inhabitants was alſo granted to him, "for replacing his former ſtock of cattle, which had been diſtri- "buted towards the preſervation of the colony." And, with a ſimilar ſpirit, the aſſembly ſoon after enacted, "that the charges of all domeſtic "inſurrections ſhall be defrayed by an equal tax upon the perſons and "eſtates of the inhabitants."[32] Thus hiſtory ſeems to demonſtrate, that rebellions, in ſuperaddition to all other evils, never fail to entail grievous burdens on the unfortunate countries which they had previouſly curſed.

The revolt being thus ſuppreſſed, and order reſtored in the ſtate, the aſſembly endeavoured, with a laudable anxiety, to preſerve the peace of the church; and, though compoſed chiefly of Roman-Catholics, it adopted that meaſure which could alone prove abſolutely ſucceſsful. The act which it paſſed, "concerning religion," recited: That the enforcement of the conſcience had been of dangerous conſequence in thoſe countries wherein it had been practiſed. And it enacted: That no perſons profeſſing to believe in Jeſus Chriſt ſhall be moleſted in reſpect of their religion, or in the free exerciſe thereof, or be compelled to the belief or exerciſe of any other religion againſt their conſent; ſo that they be not unfaithful to the proprietary, or conſpire againſt the civil government: That perſons moleſting any other in reſpect of his religious tenets ſhall pay treble damages to the party aggrieved, and twenty ſhillings to the proprietary: That thoſe reproaching any with opprobrious names of religious diſtinction ſhall forfeit ten ſhillings to the perſons injured: That any one ſpeaking reproachfully againſt the bleſſed virgin, or the apoſtles, ſhall forfeit five pounds; but blaſphemy againſt God ſhall be puniſhed with death.[33] What a fine contraſt does the chriſtian liberality of the Roman-Catholics of Maryland form to the intolerant temper and prac-

tice

tice of the Independents of Maſſachuſets! Even during the triumph of fanaticiſm, Lord Baltimore had the ſpirit to declare, that he never would aſſent to the repeal of a law, which protected the natural rights of men, by giving freedom of thought and of action to every one.[14] And a conduct, ſo worthy of the firſt magiſtrate of a free people, will reflect honour on his memory, ſo long as bigotry of every kind is contemned by the liberal and wiſe. This remarkable act was confirmed, in the year 1676, by the ſucceſſor to his virtues and his rights, among the perpetual laws of the province.[15] It was the Revolution which levelled the venerable trunk to the ground.

Virginia, animated by her peculiar attachments, diſplayed, at that period, a very different ſpirit. She paſſed ſevere laws againſt the Puritans, whoſe miniſters ſhe would not ſuffer to preach. This ſeverity of reſentment or orthodoxy conſtrained them to emigrate, in conſiderable numbers, to Maryland:[16] And the prudence of the one colony acquired what the folly of the other had thrown away. Mankind then beheld a ſcene, new and uncommon, exhibited on colonial theatres: They ſaw, in Maſſachuſets, the Independents perſecuting every different ſect; the church retaliating on them in Virginia; the Roman-Catholics of Maryland, alone actuated by the generous ſpirit of Chriſtianity, tolerating and protecting all.

The year 1650 is remarkable, in the ſtory of Maryland, for the final eſtabliſhment of that conſtitution which has continued to the preſent times. The burgeſſes, who convened in 1642, either actuated by the ſpirit natural to repreſentatives, or animated by the example of the commons of England, "deſired that they might be ſeparated, and ſit by "themſelves, and have a negative:" Yet, though the governor did not then grant their requeſt, they were afterwards more ſucceſsful, during the diſtractions which enſued; becauſe the aſſembly of 1649 was aſſuredly divided into two diſtinct parts, and tranſacted affairs in the form of upper and lower houſe. And now a law was paſſed, "for ſettling "this preſent aſſembly." It enacted; that thoſe who were called by ſpecial writ ſhall form the upper houſe; that thoſe who were choſen by the hundreds ſhall compoſe the lower houſe; and that all bills which ſhould

be aſſented to by the two branches of the legiſlature, thus eſtabliſhed and aſſented to by the governor, ſhall be deemed the laws of the province, and have the ſame effect as if the freemen were perſonally preſent.[37] It is from this epoch of its exiſtence, that the democratic part of the aſſembly, conſiſting of fourteen delegates, muſt date the origin of its peculiar immunities or excluſive privileges: Nothing would have ſounded harſher, at that time, than a claim of ſuperior powers to the other independent parts of the legiſlative power, than a pretenſion of an origin of its authority more ſacred than this conſent of the whole.

An act of recognition of the undoubted right of Lord Baltimore to that province was at the ſame ſeſſion paſſed.[38] The aſſembly declared itſelf bound, both by the laws of God and man, to acknowledge his juſt title, by virtue of the grant of the late king Charles of England: It ſubmitted to his authority, which it explicitly admitted, and it obliged its poſterity for ever to defend him, and his heirs, in his royal rights and preeminences; ſo far as they do not infringe the juſt liberties of the freeborn ſubjects of England: And it beſought him to accept that act as a teſtimony to his poſterity of its fidelity and thankfulneſs for the manifold benefits which the colony had derived from his induſtry and charge. A law, which thus did ſo much honour to both parties, continued in force to the preſent days: Yet its principle has been, probably, either derided or forgotten. And it hath been obſerved by the wiſe: How feeble are the mere declarations of laws, when oppoſed to the reſolutions of faction, to the deluſions of the multitude, or to the gripe of power.

But, while the aſſembly was thus grateful to the wiſe founder of the province, it did not forget the rights of the people. It paſſed "an act "againſt raiſing money without the conſent of the aſſembly:" It declared; "that no taxes ſhall be aſſeſſed or levied on the freemen of the "province without their own conſent, or that of their deputies, firſt "declared in a general aſſembly."[39] Yet this is extremely different from the modern reſolution, which has been noticed, that the repreſentatives poſſeſs the ſole right of impoſing duties on the whole, with the conſent only of the other members of the legiſlature. The recital of the act evinces, that the true cauſe, which produced this comprehenſive declaration,

tion, was a laudable jealouſy of the power of the proprietary. For it remarks, " that, as his ſtrength doth conſiſt in the affection of his peo- " ple, on them he doth rely for his ſupplies; not doubting of their duty " and aſſiſtance on all juſt occaſions." An aſſembly of Maryland would not, probably, have preſumed, in thoſe days, to claim rights excluſive of the authority of parliament, then in the zenith of power; who, in the year 1646, exempted the colonies, as we have ſeen, from all taxes except the exciſe: And, if the province was not declared to be in a ſtate of rebellion by the famous ordinance of 1650, yet it aſſerted, that the plantations were, and of right ought to be, dependent on England, and ſubject to its laws.

The colony was now divided into three counties, which contained eight hundreds. And we may decide with regard to the then ſtate of the arts, even the moſt common and moſt uſeful, from an order, paſſed the preceding year, " providing for the ſmith." Laws were, however, now enacted for peopling Maryland, while an order was made " for relief of " the poor;" which ſeems to have been the firſt notice that any ſuch exiſted. Puniſhments were provided for various crimes; the fees of officers were regulated: And the intereſts of agriculture and commerce were encouraged.* Thus public proſperity and private happineſs were promoted by ſalutary laws, which were as prudently executed as wiſely planned. But a ſad change was at hand, which brought numerous calamities along with it; and which, by inflicting the ſtrokes of adverſity, called forth into action the virtues of the heart.

Amid the moſt arduous affairs, the council of ſtate for the commonwealth did not neglect the plantations. No ſooner had all the European dominions of England been reduced to obedience than it ſtretched its views beyond the Atlantic. And the great object of the parliament aſſuredly was to eſtabliſh the ſame authority, legiſlative and executive, over the ſubordinate territories which they had already acquired with regard to the ſovereign ſtate. In September, 1651, commiſſioners were appointed " for reducing and governing the colonies within the bay of " Cheſapeake:" Among whom was Cleyborne, who has been ſo often mentioned as the evil genius of Maryland; and who, with his natural intereſtedneſs,

intereſtedneſs, had joined the ſtrongeſt party in the momentous contention of thoſe times, in order to proſecute his unjuſt claims on that province. Never were the vigour and wiſdom of the parliament more conſpicuouſly diſplayed than in the inſtructions which were given their deputies on that occaſion. They ſacrificed every thing to ſucceſs, as the only deity worthy of their adoration. And the commiſſioners ſeem to have executed their truſt with great attention and dexterity.

In the ſubſequent year they iſſued a variety of orders with regard to Maryland. Yet, while they eſtabliſhed the authority of the commonwealth, they did not entirely diſregard the rights of the proprietary. As, in July, 1652, he acknowledged a power which had compelled all to obey, he was permitted to rule the province as formerly, though in the name of the keepers of the liberties of England, till July, 1654, when the government was ſeized by the rough hands of Cromwell.[47]

The diſtractions of England, in the mean-time, extended their baneful influence then acroſs the ocean, as they have at every period. The contentions of Maryland, which had been long animated and frequent, at length ended in civil war. The Roman-catholics naturally adhered to the conſtitution, and ſupported the government of the proprietary, and with it the laws. The Puritans, and thoſe who wiſhed for alteration, becauſe they hoped to gain in the ſcramble, promoted the good old cauſe of innovation and the views of the protector. After various ſkirmiſhes, which were fought with alternate ſucceſs, the contending parties came at length to a deciſive engagement. But zeal will always prove an overmatch for good intentions. The wonted good fortune of Cromwell prevailed. And governor Stone being worſted and taken priſoner, was, with the uſual rancour of party, ordered to be executed according to martial law; yet the equanimity of his adminiſtration had endeared him to the ſoldiers of his adverſaries, by whoſe interceſſion his ſentence was reſpited: And he ſuffered a long and rigorous confinement.[48] Theſe notices, while they illuſtrate the ſpirit of thoſe contenders for power, evince how much more dreadful, and by all poſſible means to be avoided, is domeſtic than foreign war.

In

In July, 1654, Cleyborne and Bennet appointed Fuller, Preſton, and others, commiſſioners "for directing the affairs of Maryland, under his "highneſs the lord protector." And theſe men ſoon called an aſſembly, to meet in the ſubſequent October. Amid the frequent changes and the deviations from the uſual rules of conduct, which too frequently occurred in thoſe days, it is pleaſing to obſerve the delicate ſentiments of honour regarded by a few. Chandler and Hatton, being returned burgeſſes for St. Mary's county, refuſed to ſerve in that capacity; becauſe they deemed it "inconſiſtent with the oaths which they had taken to Lord Balti-"more." The act of recognition and gratitude, of 1650, ſeems to have been forgotten by the greater number in the tumult of faction. Nor is it one of the leaſt evils attending ſimilar revolutions, that they neceſſarily tend to corrupt the minds of men, becauſe they beget a total diſregard of former engagements, either civil or religious. The aſſembly naturally paſſed, in the firſt place, "an act of recognition of Cromwell's juſt title "and authority;" becauſe from him it had derived its preſent power. It next eſtabliſhed "an act concerning religion," declaring: That none, who profeſſed the popiſh religion, could be protected in this province by the laws of England, formerly eſtabliſhed, and yet unrepealed; nor by the government of the commonwealth: That ſuch, as profeſs faith in God, by Jeſus Chriſt, though differing in judgement from the doctrine and diſcipline publicly held forth, ſhould not be reſtrained from the exerciſe of their religion; "provided ſuch liberty was not extended to popery or "prelacy; or to ſuch as, under the profeſſion of Chriſt, practiſed licen-"tiouſneſs." But how different are the temper and conduct of this aſ-ſembly from that of 1649! Yet it would be incongruous to argue with men who thus contemned the laws of the province without cauſe; and it would be improper to point out the inconſiſtency of thoſe, who profeſ-ſedly acted contrary to the common principles of the world, without a bluſh. A variety of other laws, equally characteriſtic of the ruling par-ty, were at the ſame time enacted; which happily did not endure long, and deſerve not to be now remembered.

Virginia ſeems to have attempted once more, during thoſe times of in-novation, to recover its loſt authority over Maryland: But her forward-neſs

neſs was immediately checked by Cromwell. He gave ſtrict orders to the governor and council "not to meddle in the buſineſs that hath hap-"pened between the men of Severn and Lord Baltimore's officers, but "to leave that affair to be ſettled by the commiſſioners of the parlia-"ment."[43] The deputies of the protector in Maryland ſeem neither to have been men of much political knowledge, nor extremely attentive to the punctualities of duty. They were reprimanded by their maſter for not underſtanding orders that were probably unintelligible. And, in September, 1655, he informed them: "That they had miſtaken his "former letter, as if he would have had a ſtop put to their proceedings "for ſettling the civil government; whereas he only intended to pre-"vent any violence to be offered to Virginia with regard to bounds; "they being now under conſideration."[44] Thus the protector generally made up in vigour of conduct what he wanted in perſpicuity of diction.

Nevertheleſs, though diſputes with their neighbours were compoſed by the deciſive interpoſition of Cromwell, the intemperate proceedings of his commiſſioners did not preſerve internal tranquillity, or inſure their own repoſe. Thoſe diſorders, which never fail to reſult from religious perſecution, when embittered by the triumph of party in civil contention, neceſſarily enſued. And an inſurrection was eaſily raiſed by Joſias Fendal, a man of reſtleſs intrigue, in the end of the year 1646. But, like all unſucceſsful commotions, it ſerved only to rivet faſter the chains which already galled the friends of the ancient conſtitution, and to burden the province with additional impoſitions.[45]

In this diſtracted ſtate did the affairs of the province continue, till March, 1658. The government was then ſurrendered by the commiſſioners to Fendal, who had been appointed governor by the proprietary; becauſe his habitual turbulence had been miſtaken for a principle of attachment to his lord. But ſo far was the public quiet from being reſtored, that thoſe miſchiefs, which had ſo long unhappily waſted Maryland, were rather aggravated by the intrigues of that intereſted man, whoſe duty required him to promote its repoſe. And no ſooner did the aſſembly meet, in February, 1659, than the burgeſſes, following the example of that deteſtable band who had uſurped the name and authority of

of the commons, by his direction or connivance, diſſolved the upper houſe, and aſſumed every power in the ſtate. Into their hands he ſurrendered, with peculiar treachery, what had been ſo lately intruſted to him, and from them accepted a new commiſſion as governor. The evil of bad example was not the only one which the province found cauſe to lament: The aſſembly of 1661 regretted, what might have been foreſeen, "the vaſt charge that had been drawn upon it by the late treacherous revolt of Fendal and his accomplices."[46] Yet it is ſtill more to be deplored, that hiſtory holds up examples to mankind, for their inſtruction, in vain; becauſe men act generally from the impulſe of the moment, diſregarding the well-earned experience of their fathers. Nothing could be more inconſiſtent with the fundamental conſtitution of the province, and at the ſame time exhibit a more ſtriking picture of that uſurpation, than the perſecution of the Quakers. That ſect, whoſe principles and conduct are now ſo reſpectable, becauſe they are ſo favourable to the intereſts of ſociety, was then deſcribed "as compoſed of vagabonds, that have of late preſumed to come into the country, and diſſuade the people from complying with military diſcipline, from giving teſtimony, from ſerving as jurors, or in office:" And the ruling powers commanded the juſtices of the peace "to cauſe them to be apprehended and whipped."[47] When thoſe groſſneſſes, which naturally adhere to the founders of every ſect, were at length purged off, theſe men, or their immediate deſcendants, were juſtly deemed among the moſt reputable of all the inhabitants that Maryland could boaſt. Fendal continued not long, however, to miſrule a colony, the miſeries of which, like thoſe of the ſovereign ſtate, commenced only when it departed from the juſt principles of the ancient conſtitution.

Philip Calvert being appointed governor by the proprietary in June, 1660, aſſumed the adminiſtration in the ſubſequent December. His predeceſſor was now tried for high-treaſon, and found guilty: But the accuſtomed magnanimity of the founder of the province prevailed over his reſentments, and he granted him a pardon on paying a moderate fine. Thus was he reſerved, though juſtly rendered incapable of future truſt, to diſturb the public repoſe, by other intrigues and treachery, at an after

period. And his accomplices, upon a timely ſubmiſſion, were fully pardoned without proſecution. With the commiſſion of the proprietary was tranſmitted a letter from Charles II. commanding all officers and others his ſubjects in Maryland, to aſſiſt that gentleman in the re-eſtabliſhment of Lord Baltimore's juſt rights and juriſdictions.[48]

Notwithſtanding thoſe various diſtractions and revolutions, proceeding from the turbulent ſpirit of the times, when men had broken looſe from the uſual reſtraints of law and order, the province continued to increaſe in population, in induſtry, and in wealth. And it contained, at the epoch of the Reſtoration, about twelve thouſand perſons.[49]

AUTHORITIES AND NOTES.

[1] Parliamentary Debates, 1620-1, 1 v. p. 175.

[2] Smith's Hiſt. Virg. which has preſerved a liſt of the old company of Virginia, p. 130; and ſee the charter of 1609 in Stith.

[3] Virg. Ent. in Plant. Office, 1 v. p. 201-78. A commiſſion in Rymer's Fœdera, 17 v. p. 649. dated in February, 1625, ſhews, in oppoſition to what was miſtakingly ſaid in the Miſcellaneous State-papers lately publiſhed, — "that Sir George Calvert continued to act as ſecre-" tary of ſtate during the reign of James I."

[4] Purchas's Pilgrim, 4 v. and the letters of Sir George Calvert in the Strafford papers.

[5] Virg. papers, 75. B. p. 135. and ſee the recital of the charter.

[6] There is an excellent copy of the charter, taken from the records in the chapel of the Rolls, annexed to Bacon's laws of the province; there is a copy in the Maryland Ent. Plant. Office, 1 v. p. 1.

[7] Hiſtorical Regiſter, 18 v. p. 39.

[8] Sir Edward Cooke aſſured the Commons, during the ſeſſion of 1620-1, in a debate on the royal prerogative: "That in 4° H. VII. a diſpenſa-" tion was granted, that ſome ſhould not pay ſubſidies: This was after " repealed by act of parliament; for otherwiſe it would have grown ſo " common, that no man would have paid, ſeeing others freed." — Parl. Deb. 1621, 1 v. p. 65.

[9] Com.

[9] Com. Journ. 1 v. p. 878-9. — [10] Rym. Fœd. 18 v. p. 932-1010.

[11] Purchas's Pilgrim, 4 v. p. 1784-7.

" During the years 1627, 28, 29, the governors of Virginia gave authority to William Cleyborne, " the ſecretary of ſtate of this kingdom," as that moſt ancient dominion was then called, to diſcover the ſource of the bay of Cheſapeake, or any part of that government, from the 34th to the 41ſt degree of North latitude. — Virg. papers, 75 B. p. 133-4. — Thus were the boundaries of Virginia extended in thoſe years to the 41ſt degree of latitude, " where New-England began :" And we may thence infer, that, though the ſubjects of other nations traded with the aborigines in the bay of Delaware, yet no ſettlements had been then formed on either margin of it by the Dutch or Swedes.

[12] The following royal licence is ſubjoined; becauſe, it is the moſt ancient ſtate-paper of Maryland; it laid a train of numerous woes to that province; by giving an intereſted man a pretence to claim a large part of it. — From Virg. pap. 75 B. p. 131.

" CHARLES Rex.

Whereas our truſty and well-beloved William Cleyborne, one of the council and ſecretary of ſtate for our colony of Virginia, and ſome other adventurers, which with him have condeſcended, with our truſty and well-beloved counſellor, Sir William Alexander, Knight, our principal ſecretary of ſtate for our kingdom of Scotland, and others of our loving ſubjects, who have charge over our colonies of New-England and Nova-Scotia, to keep a courſe for interchange of trade among them as they ſhall have occaſion, as alſo to make diſcoveries for increaſe of trade in thoſe parts; and becauſe we do very much approve of all ſuch worthy intentions, and are deſirous to give good encouragement to their proceedings therein, being for the relief and comfort of thoſe our ſubjects, and enlargement of our dominions: Theſe are to licenſe and authoriſe you, the ſaid William Cleyborne, his aſſociates, and company, freely, without interruption, from time to time, to trade for corn, furs, or any other commodity whatſoever, with their ſhips, boats, men, and merchandiſe, in all ſeas, coaſts, harbours, lands, or territories, in or near about thoſe parts of America, for which there is not already a patent granted to

others for ſole trade; and, to that effect, we command you and every one of you, and particularly our truſty and well-beloved Sir John Harvey, Knight, governor, and the reſt of our council of our colony of Virginia, to permit him and them, with their ſhips, mariners, merchandiſes, ſervants, and ſuch as ſhall willingly accompany or be employed by them from time to time, freely to repair and trade to and again in all the aforeſaid parts as they ſhall think fit and their occaſions ſhall require, without any hindrance whatſoever, as you and every of you will anſwer the contrary at your perils: Giving, and by theſe preſents granting, unto the ſaid William Cleyborne, full power to direct and govern, correct and puniſh, ſuch of our ſubjects as ſhall be under his command in his voyages and diſcoveries; and for his ſo doing theſe preſents ſhall be a ſufficient warrant. Given at our manor of Eaſt-Greenwich, the 16th of May, in the ſeventh year of our reign, 1631.

To our truſty and well-beloved our governor and council of Virginia, and to all our lieutenants of provinces and countries in America, governors, and others having charge of colonies of any of our ſubjects, captains and maſters of ſhips, and, generally, to all our ſubjects whatſoever, whom theſe preſents do or may concern."

REMARK. This paper was evidently drawn by Sir William Alexander, and afterwards paſſed under the privy ſignet of Scotland: What right within an Engliſh colony could that convey?

[14] The following commiſſion ſhews how the former was obeyed, and is the ſecond ſtate-paper of Maryland. — From Virg. Pap. 75 B. p. 130.

" To all to whom theſe preſents ſhall come. I, Sir John Harvey, Knight, governor and captain-general of Virginia, ſend greeting, in our Lord God everlaſting. Whereas my truſty and well-beloved friend, William Cleyborne, Eſquire, and one of the council of ſtate for this colony, hath

hath desired, for increase of trade, to obtain this my commission to sail and traffic unto the adjoining plantations of the Dutch seated upon this territory of America; which may tend to an intermutual benefit, wherein we may be useful to one another: Now know ye, that I, the said Sir John Harvey, out of the good opinion I conceive of the discretion and understanding of the said Captain William Cleyborne, do, by these presents, with the consent of the council of state, authorise him, with the first convenience of wind and weather, to set sail from hence, in such barques and pinnaces, and with such companies of men, as shall willingly accompany him to go unto the said plantations of the Dutch, or unto any English plantation, or to such other harbours, rivers, and places, as he shall find occasions; praying all governors, captains, and commanders, to afford to him and them all lawful favour and respect, they behaving themselves fairly and honestly in all things: Giving, and by these presents granting, unto him, the said Captain William Cleyborne, full power and authority to direct and govern such persons as shall accompany him in his said voyage. — Given at James-City, the 8th of March, A. D. after the computation of the church of England, 1631; and in the five and twentieth year of this southern colony of Virginia.

JOHN HARVEY."

REMARK. Had this commission been discovered, during the long contest between Baltimore and Penn, when it was as strongly insisted on by one as denied by the other, that subjects of Sweden or of Holland were then settled on the south-western bank of the Delaware, what an admirable litigation of words would not the expressions, "adjoining plantations of the Dutch," have offered to the lawyers! Yet the travels of Pory, in 1620; the several commissions of discovery before-mentioned; the notices of contemporary history; all seem to evince, that the language or intentions of Harvey must not be literally understood: And it is extremely probable, that the word "adjoining" was applied to the Dutch plantation of Manhattans; because the Swedes, who were the first settlers on the Delaware, are not mentioned or alluded to.

[15] Virg. Papers, 75 B. p. 135.

[16] Brit.

[16] Brit. Emp. in Am. 1 v. 186-7; Douglas's Sum. 2 vol. p. 356-8; Bacon's Laws of the Province, 1641, ch. 6.

[17] Sir J. Harvey's letter. — Amer. Library, p. 79.

The ſubjoined conſultation of the governor and council of Virginia, on the 14th of March, 1633-4, demonſtrates the temper with which Calvert and his followers were received on their arrival in Cheſapeake. — From Maryland Papers, v. 1. bundle C.

"Preſent,

Sir John Harvey, governor,	Capt. Cleyborne,	Capt. Tho. Purfry,
Capt. John Weſt,	Mr. Wm. Farar,	Capt. Joſ. Bullock,
Capt. Sam. Mathews,	Capt. John Uty,	Capt. Wm. Perry.

Captain William Cleyborne requeſted the opinion of the board, how he ſhould demean himſelf in reſpect of Lord Baltimore's patent, and his deputies now ſeated in the bay; for that they had ſignified to Captain Cleyborne, that he was now a member of that plantation, and therefore ſhould relinquiſh all relation and dependence on this colony. It was anſwered by the board, that they wonder why any ſuch queſtion was made; that they knew no reaſon why they ſhould render up the rights of that place of the iſle of Kent, more than any other formerly given to this colony by his majeſty's patent; and that, the right of my lord's grant being yet undetermined in England, we are bound in duty and by our oaths to maintain the rights and privileges of this colony: Neverthelefs, in all humble ſubmiſſion to his majeſty's pleaſure, we reſolve to keep and obſerve all good correſpondence with them, no way doubting that they on their parts will not entrench upon the intereſts of this his majeſty's plantation."

[18] The following minute of the proceedings of the privy-council will ſhew how "the right of my lord's grant" was decided, though that circumſtance was unknown in Virginia, in March, 1634. — From Maryland Pap. vol. 1, bundle C.

"At

"At the Star-Chamber: — 3d July, 1633.

Preſent,

Lord Keeper,	Earl Danby,
Lord Privy-Seal,	Lord Viſcount Wentworth,
Lord High Chamberlain,	Lord Viſcount Falkland,
Earl Dorſet,	Lord Cottington,
Earl Bridgewater,	Mr. Secretary Windebank.

Whereas an humble petition of the planters of Virginia was preſented to his majeſty, in which they remonſtrate, that ſome grants have lately been obtained of a great portion of lands and territories of the colony there, being the places of their traffic, and ſo near to their habitations, as will give a general diſheartening to the planters, if they be divided into ſeveral governments, and a bar put to that trade which they have long ſince exerciſed towards their ſupportation and relief, under the confidence of his majeſty's royal and gracious intentions towards them, as by the ſaid petition more largely appeareth: Foraſmuch as his majeſty was pleaſed, on the 12th of May laſt, to refer to this board the conſideration of this petition, that, upon the advice and report of their lordſhips ſuch orders might be taken as to his majeſty might ſeem beſt: It was thereupon ordered, on the 4th of June laſt, that the buſineſs ſhould be heard on the ſecond Friday in this term, which was the 28th of the laſt month, and that all parties intereſted ſhould then attend; which was accordingly performed; and their lordſhips, having heard the cauſe, did then order, that the Lord Baltimore, being one of the parties, and the adventurers and planters of Virginia, ſhould meet together betwixt that time and this day, and accommodate their controverſy in a friendly manner, if it might be, and likewiſe ſet down in writing the propoſitions made by either party, with their ſeveral anſwers and reaſons, to be preſented to the board this day; which was likewiſe accordingly done. Now, their lordſhips, having heard and maturely conſidered the ſaid propoſitions, anſwers, and reaſons, and whatever elſe was alledged on either ſide, did think fit to leave Lord Baltimore to his patent, and the other parties to the courſe of law, according to their deſire. But, for the preventing of farther queſtions and differences, their lordſhips did alſo think fit

fit and order, that, things ſtanding as they do, the planters on either ſide ſhall have free traffic and commerce each with the other, and that neither party ſhall receive any fugitive perſons belonging to the other, nor do any act which may draw on a war from the natives upon either of them: And, laſtly, that they ſhall ſincerely entertain all good correſpondence, and aſſiſt each other on all occaſions, in ſuch manner as becometh fellow-ſubjects and members of the ſame ſtate."

[19] Virg. Pap. 75 B. p. 125.

[20] The Reverend Thomas Bacon, the admirable editor of the Laws of Maryland, cautiouſly remarked, of the acts of the aſſembly of 1637-8; "That they are the firſt of which any record appears in this province." But, among the Virg. Pap. [75 B. p. 126.] there is a copy of the Act of Attainder of Cleyborne, the title of which Bacon had only ſeen, which recites the proceedings of an aſſembly held at St. Mary's the 26th of February, 1634-5.

[21] In the ſame papers [p. 139] there is an examination of the king of Patuxent relative to Cleyborne's intrigues; there is a copy of his indictment, and of the inquiſition finding the forfeiture of his eſtate. — Ib. 126-8.

[22] Bac. Laws, 1637. — Bills, number 1-42.

[23] The following letter from Charles I. to Lord Baltimore evinces how little the pretenſions of Cleyborne were then underſtood, and diſcloſe facts not generally known. — From Maryland Papers, vol 1. bundle C.

"CHARLES REX.

Right, truſty, &c. Whereas formerly, by our royal letters to our governor and council of Virginia, and to others, our officers and ſubjects, in theſe parts, we ſignified our pleaſure, that William Cleyborne, David Morehead, and other planters in the iſland near Virginia, which they have nominated Kentiſh-iſland, ſhould in no ſort be interrupted in their trade or plantation by you, or any other in your right, but rather be encouraged to proceed cheerfully in ſo good a work; we do now underſtand, that, though your agents had notice of our ſaid pleaſure, ſignified by

by our letters, yet, contrary thereto, they have ſlain three of our ſubjects there, and by force poſſeſſed themſelves by night of that iſland, and ſeiſed and carried away both the perſons and eſtates of the ſaid planters. Now, out of our royal care to prevent ſuch diſorders, as we have referred to our commiſſioners of plantations the examination of the truth of theſe complaints, and required them to proceed therein according to juſtice; ſo now, by theſe particular letters to yourſelf, we ſtrictly require and command you to perform what our former general letter did injoin, and that the above-named planters and their agents may enjoy, in the mean time, their poſſeſſions, and be ſafe in their perſons and goods there, without diſturbance or farther trouble by you or any of yours, till that cauſe be decided: And herein we expect your ready conformity, that we may have no cauſe of any farther miſlike. Given under our ſignet, at our manor of Greenwich, the 14th day of July, in the 14th year of our reign, 1638."

[24] Virg. Pap. 75 B. p. 147.

[25] The following minute of the proceedings of the lords commiſſioners of plantations ſhews the final determination of the claims of Cleyborne to part of Maryland. — From Maryland Papers, vol 1. bundle C.

" At Whitehall: — 4th of April, 1639.

Preſent,

Lord Archbiſhop of Canterbury,
Lord Keeper,
Lord Treaſurer,
Lord Privy Seal,
Earl Marſhal,
Earl Dorſet,
Lord Cottington,
Mr. Treaſurer,
Mr. Comptroller,
Mr. Secretary Cooke,
Mr. Secretary Windebank.

Whereas a petition was preſented to his majeſty by Captain William Cleyborne, on the behalf of himſelf and partners, ſhewing, that, by virtue of a commiſſion under his majeſty's hand and ſignet, they, divers years paſt, diſcovered and planted upon an iſland in the great bay of Cheſapeake in Virginia, named by them the iſle of Kent; whereupon, as they pretended, they had beſtowed great charges; and that the Lord Baltimore, as they alledged, taking notice of the great benefit that was like to ariſe to

them thereby, obtained a patent from his majeſty, comprehending the ſaid iſland within the limits thereof; and that they had likewiſe ſettled another plantation upon the mouth of a river in the bottom of the ſaid bay, in the Suſqueſohanough's country, which the ſaid Lord Baltimore's agents there, as they alledge, ſought to diſpoſſeſs them of, pretending likewiſe great injuries and violence offered to them in their trade and poſſeſſions in thoſe parts by the ſaid agents, in killing ſome of the ſaid captain Cleyborne's men and taking their boats, contrary to the ſaid commiſſion, and the expreſs words of a letter from his majeſty under his hand and ſignet: And therefore beſought his majeſty to grant to the petitioners a confirmation, under the great ſeal, of his majeſty's ſaid commiſſion and letter, for the quiet keeping, enjoying, and governing, of the ſaid iſland, plantation, and people, with other additaments of lands and immunities in thoſe parts; and likewiſe that his majeſty would refer the examination of the ſaid wrongs and injuries to ſuch as his majeſty ſhould think fit, as by the ſaid petition more at large appeareth. For as much as his majeſty was pleaſed, at Newmarket, on the 26th of February, 1637, to refer the conſideration of the petitioners requeſt unto the lord-archbiſhop of Canterbury, the lord-keeper, the lord privy-ſeal, and other the commiſſioners for plantations, who ſhould be near at hand, and whom they pleaſed to call, and withal to adviſe with Mr. Attorney-general, for the preparing and ſettling the grant deſired for his majeſty's ſignature, and to examine the wrongs complained of, and to certify to his majeſty what they thought fit to be done for redreſs thereof. Whereupon all parties attending their lordſhips this day, with their counſel learned, and being fully heard, the ſaid commiſſion and letters being likewiſe read, it appeared clearly to their lordſhips, and was confeſſed by the ſaid Cleyborne himſelf, then preſent, that the ſaid iſle of Kent is within the bounds of the Lord Baltimore's patent; and the ſaid Cleyborne's commiſſion (as it likewiſe appeared) was only a licence, under the ſignet of Scotland, to trade with the Indians in America, in ſuch places where the ſaid trade had not been formerly granted by his majeſty to any other; which commiſſion their lordſhips were of opinion did not extend nor give any warrant to the ſaid Cleyborne or any other, nor had they any right or title thereby

thereby to the ſaid iſland of Kent, or to plant or trade there, or in any other parts or places with the ſavages within the precincts of the Lord Baltimore's patent. And their lordſhips did likewiſe declare, that the aforeſaid letter, under his majeſty's ſignature, which had reference to the ſaid commiſſion under the ſignet of Scotland, was grounded upon miſinformation, by ſuppoſing that the ſaid commiſſion warranted the plantation in the iſle of Kent, which (as now appears) it did not. Whereupon, as alſo upon conſideration of a former order of this board, of the 3d of July, 1633, wherein it appeared, that the differences now in queſtion being then controverted, the lord Baltimore was left to the right of his patent, and the petitioners to the courſe of law; their lordſhips having reſolved and declared as aboveſaid the right and title to the ſaid iſle of Kent and other places in queſtion, to be abſolutely belonging to the ſaid Lord Baltimore; and that no plantation or trade with the Indians ought to be within the precincts of his patent without licence from him; did, therefore, think fit and declare, that no grant from his majeſty ſhould paſs to the ſaid Cleyborne or any others, of the ſaid iſle of Kent or other places within the ſaid patent; whereof his majeſty's attorney and ſolicitor general are hereby prayed to take notice. And, concerning the violences and wrongs, by the ſaid Cleyborne and the reſt complained of, in the ſaid petition to his majeſty, did now alſo declare, that they found no cauſe at all to relieve them, but do leave both ſides therein to the ordinary courſe of juſtice.

[26] Obſervat. on the ancient Stat. p. 6. — Yet, in the oath taken by the governor and council, between the years 1637 and 1657, there was the following clauſe, which ought to be adminiſtered to the rulers of every country. "I will not, by myſelf or any other, directly or indirectly, "trouble, moleſt, or diſcountenance, any perſon profeſſing to believe "in Jeſus Chriſt, for or in reſpect of religion." The ſcruples of king William, when taking the Scottiſh coronation oath, which he conceived obliged him to become a perſecutor, have been juſtly celebrated. But the laws of Maryland, with a ſpirit that cannot be too much praiſed, obliged thoſe, who were intruſted with the execution of them, to ſwear, "that "they would not perſecute."

[27] Bac. Laws, 1638, ch. 1-2.

[28] See before the laſt chapter of Virginia; and ſee an elaborate memorial, which was written in thoſe days, entitled: "A declaration, "ſhewing the illegality and unlawfulneſs of the patent of Maryland." — Virg. Papers, 75 B. p. 135.

[29] Bac. Laws, 1640, ch. 2-10. — [30] Bac. Laws, 1642, ch. 54. — 1649, ch. 3-6. — [31] Bacon's Preface, which cites the provincial records; Laws, 1650, ch. 24; Ib. 1650, ch. 4. — [32] Ib. 1649, ch. 9; 1650, ch. 26. — [33] Ib. 1649, ch. 1.

[34] See a book publiſhed, 1655, for the author, John Langford, entitled "a juſt and clear Refutation of a falſe and ſcandalous Pamphlet, named, "Babylon's Fall in Maryland."

[35] Laws, 1676, ch. 2. — [36] Brit. Emp. in Amer. 1 v. p. 191-246. — [37] Laws, 1649, ch. 12; 1650, ch. 1. — [38] Ib. 1650, ch. 23. — [39] Ib. 1650, ch. 25. — [40] Ib. 1649, ch. 12; 1650, ch. 1-33. — [41] Bacon's Pref. which cites the provincial records; Thurlow's State Pap. 1 v. 197-8. — [42] Bacon's Pref.

[43] Bac. Laws, 1654, N° 1-46. — There is much reaſon to believe "that "Cromwell talked to men and to ſectaries in their own way:" And there is a letter from him to his commiſſioners ſtill remaining among the records of the province; "commanding them not to buſy themſelves about "religion, but to ſettle the civil government."

[44] Thurlow's State Papers, 3 v. 592; vol. 4. p. 55. — [45] Laws, 1657, ch. 8.

[46] Laws, 1658, ch. 1; 1661, ch. 6. — No ſooner was the aſſembly convened, than the burgeſſes ſent the following paper to the upper houſe:

To the honourable the governor and council,

That this aſſembly of burgeſſes, judging themſelves to be a lawful aſſembly, without dependence upon any other power in the province now in being, is the higheſt court of judicature: And, if any objection can be made, we deſire to hear it." A conference enſued. And the upper houſe refuſing to betray at once its truſt and its own juſt authority, was diſſolved by the burgeſſes. — Laws, 1659.

[47] Maryland Papers, D. p. 33.

[48] Laws,

48 Laws, 1659. — Charles, lord Baltimore, ſays, in a letter to Mr. Blathwayt, one of the clerks of the council, dated in January, 1682: "That, though Fendal was pardoned in 1659, yet that he had endea-"voured, on all occaſions, to raiſe a mutiny in the province; and, truly, "he had almoſt effected it in July laſt." Fendal was tried in November, 1681, for ſeditious practices, and found guilty: He was fined 40,000 lb. weight of tobacco; impriſoned till payment; and baniſhed the province. — See his trial at large, and lord Baltimore's letter annexed, in Maryland Papers, vol. 1.

49 Brit. Emp. in Amer. 1 vol. p. 191.

CHAP.

CHAP. X.

Preliminary remarks.—The Reſtoration.—Obſervations.—Subſequent adminiſtration of the colonies.— Proceedings of the reſtoration-parliament.— Inſtructions to the governor of Virginia.—Conduct of the aſſembly.— Laws of Maryland.— The Indians repelled. — Maſſachuſets receives the news of the Reſtoration.—Its ſubſequent conduct.—Sends an addreſs to Charles.— Makes a declaration of rights.— At length proclaims that monarch.— The manner.— Sends deputies to England.— That prince's anſwer.— How received in the colony.— Remarks.

THE conſtitution of England had lain, antecedent to the civil wars, in a kind of confuſion, ſays an admirable writer; [1] yet ſo that the people poſſeſſed many noble privileges, which, though not clearly ſpecified or exactly bounded, were univerſally deemed to belong to them as their birthright. But it muſt be admitted, that the nation, at every period of her ſtory, had been ruled by a limited monarchy, though the component parts of the legiſlature exerciſed very different powers during various and diſtant ages. And the ſovereign and the ſubject had derived their mutual rights from the ſame infallible ſource of eſtabliſhed laws, which both were equally bound to revere and defend.

Were we, agreeably to the ſpirit of this reaſoning, to judge of the conduct of the two great parties, which, during the laſt century, divided, diſtracted, and enſlaved, the Engliſh empire, we ſhould find ſomething to commend, but much to blame. The adminiſtration of the miſguided Charles was, for too many years, not only contrary to law, but neceſſarily tended to ſubvert the whole ſyſtem of Engliſh juriſprudence. Yet redreſs was at length ſought, and by him conſtitutionally given, in full parliament, before the civil war commenced: And this circumſtance alone deducts conſiderably from the demerits of a prince, who, when too late, evinced that he poſſeſſed virtues and talents, which, during any other ſeaſon, were ſufficient to render himſelf great, and his people happy. Much praiſe is due to his opponents for procuring an abolition of

of encroachment, and an improvement of the conſtitution. But their ſubſequent conduct was equally contrary to law, and tended equally to ſubvert the eſtabliſhed balance of the ſupreme power, wherein was lodged the authority of every order in the ſtate: And the blame, which ought to be imputed to them, ſhould be in proportion to the extent of their proceedings with regard to both. The event of the wars that enſued is well known to every one; fatal to the king firſt, to the parliament afterwards: Affording, however, this inſtructive leſſon to free ſtates, that true liberty is never more endangered than when intemperate zeal directs the hands which defend her rights.

The reſtoration of Charles II. to the throne of his anceſtors, in May, 1660, forms a remarkable epoch, as well in the hiſtory of the colonies, as in that of the ſovereign ſtate. For uſurpation had long reigned triumphant equally on both ſides of the Atlantic: And with that event was the conſtitution of both happily re-eſtabliſhed. Though the general adminiſtration of that prince is unworthy of commendation, and iniquities contrary to all principles were practiſed during his reign; yet, by the ſtatutes favourable to the intereſts of freedom, which were then enacted, Engliſh liberty was completely reſtored: And nothing was there wanting, to render the excellent ſyſtem abſolutely perfect, but what the Revolution in a great meaſure ſupplied, a practical mode of government according to the laws of the land. The ſame rules of conduct, whether ſalutary or baneful, which during that reign were adopted for England, conſtantly extended their influence, either good or evil, acroſs the ocean: And the colonies, now no longer conſidered by the court as the mere property of the prince, were deemed, what they aſſuredly always were, territories of the crown, inhabited by Engliſh ſubjects, who poſſeſſed rights, and were juſtly entitled to conſideration.

The only plantations which, after the emigrations of half a century, embelliſhed the American continent, were, Virginia, New-England, and Maryland: And all theſe probably contained no more than eighty-thouſand inhabitants. In their infancy they had ſcarcely been objects of parliamentary taxation or legiſlation. Nevertheleſs we have obſerved the parliament, during every reign, and under every form of government,

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as well of James and Charles, as the commonwealth and protector, eſtabliſhing regulations, and granting exemptions; aſſerting their right to exerciſe ſuch authority in language the moſt forcible; compelling their obedience by the ſword: And this conduct of the legiſlature, we have ſeen, was deemed by them rather favourable to the intereſts of colonial freedom than inconſiſtent with their immunities. Yet, during the foregoing period, the colonies, owing to the diſtractions of the times, and to their former inſignificance, had not attracted the attention of the courts of juſtice in Weſtminſter-hall. But, the ſtrong declarations of the long parliament, their preſent importance, and other cauſes, raiſed them into judicial notice. When the judges reflected on the nature of the conſtitution, when they conſidered thoſe principles of the common law which bind the territories to the ſtate, they declared the plantations to be in all reſpects like the other ſubordinate dominions of the crown, and like them to be equally bound by acts of parliament, when ſpecially named, or when neceſſarily ſuppoſed within the contemplation of the legiſlature. Such was their univerſal opinion, during the reign of Charles II. and James, ſo the ſame ſentiment has been conſtantly recogniſed by the wiſeſt of their ſucceſſors to the preſent times.[3] The uniform conduct of parliament has confirmed and enforced the declarations of the courts of juſtice. And the wiſe have at all times thought theſe circumſtances conjoined the beſt evidence of the exiſtence and validity of a conſtitutional principle.

Charles II. was no ſooner reſtored, than the parliament granted, among other duties, a ſubſidy of twelve pence in the pound of the value of merchandiſes, exported from this realm or imported into it, "or any of his "majeſty's dominions to the ſame belonging."[4] But, ſome doubts ſoon after ariſing from the miſapprehenſions of intereſt, not whether the power of the ſupreme legiſlature was co-extenſive with the boundaries of the empire, but, with regard to the territories which were really intended by the legiſlature, they were judicially explained by the ſenſible Vaughan,[5] chief juſtice, to be thoſe only of the crown of England: Giving for a reaſon, what policy had previouſly adopted; "that nothing can be "enacted here concerning his majeſty's dominions not of the crown of "England."

" England." And it is extremely remarkable, that the ſame expreſſions are literally copied into all the ſubſequent acts which eſtabliſhed the one-third ſubſidy of Anne,[6] the two-thirds ſubſidy,[7] and the impoſition of 1747.[8] Thus, the duty of tonnage and poundage, the collection of which without the national conſent had deſervedly occaſioned ſo great a ferment during the preceding reign, was impoſed by the parliament over every territory of the Engliſh empire, whether in Europe or Aſia, Africa or America.

From the exertions of taxation the legiſlature turned its attention to thoſe of legiſlation. The commercial regulations, which James I. and Charles had attempted to eſtabliſh for the plantations by prerogative alone, which were more vigorouſly enforced by the ordinances of the commonwealth, but had never been punctually executed or obeyed, were now adopted as a ſyſtem of ſound policy. And a law was paſſed " for " the encouragement of navigation."[9] It enacted: That no merchandiſe ſhall be imported into the plantations, or territories to his majeſty belonging in Aſia, Africa, and America, or exported from them, but in Engliſh veſſels, navigated by Engliſhmen; declaring that theſe terms ſhould include the ſhipping and the men of every dominion of the crown, however diſtant and however ſeparated: That no ſugar, tobacco, ginger, indigo, cotton, fuſtic, dying woods, of the growth of the Engliſh territories in America, Aſia, or Africa, ſhall be tranſported thence to any other country than thoſe belonging to the crown of England, under the penalty of forfeiture: Diveſting the coloniſts of their property, ſhould they act contrary to the rule preſcribed. The ſpecification of thoſe various productions, which were no longer to be ſent directly from the plantations to foreign nations, has given riſe to the well-known term, in the law of cuſtoms, of " enumerated commodities;" and, when new articles were brought into commerce, as the rice of Carolina, the melaſſes of the Weſt-Indies, the copper ore of the northern colonies, they were inſtantly inſerted in the liſt, and ſubjected to the ſame regulations: But every object of trade, which was not ſpecified, the provincials might tranſport whither they pleaſed; becauſe, with regard to that, they enjoyed the freedom of traffic, which the common-law gave them as Engliſh ſubjects.

In order to execute this ſyſtem, the law required, that the governors of the plantations ſhall take an oath, before they entered on their offices, to obey fully every part thereof; yet, though it impoſed a duty, it did not ſupply them with power: And, though no veſſels were allowed to load with any of the enumerated commodities till thoſe officers were ſatisfied, that a bond had been given, obliging the owners to carry the colonial productions to ſome dominion of the crown; yet no mode was eſtabliſhed by which obedience could be eaſily enforced. It prohibited aliens from acting as merchants or factors in the plantations, on pain of forfeiture of their goods. But it is extremely remarkable that this ſtatute, with the liberality of the law of England, makes no diſtinction with regard to any of the ſubjects of the crown, whereſoever reſiding; they were all equally reſtrained: And, though Scotland was mentioned, yet, being then perfectly independent of England, it was deemed a foreign country. Perſons, however, who were born in it, ſubſequent to the acceſſion of James I. to the Engliſh throne, might have acted in the colonies, as merchants, or factors, or navigators, becauſe they were, in judgement of law, natural-born ſubjects, and conſequently were entitled to the rights of Engliſhmen. [10]

Nevertheleſs it was much more eaſy to eſtabliſh that famous regulation than to carry it into actual execution. The moſt ſubmiſſive coloniſts conſidered it as grievous; intereſt diſcovered modes of evaſion of what was deemed prejudicial; the governors were not prone to enforce what they ſaw was diſagreeable to the men over whom they preſided: And we ſhall find that it has required the conſtant exertions of Engliſh government, to the preſent times, though without abſolute ſucceſs, to oblige all to regard and to obey the acts of navigation, ſo eſſential to its power."

The parliament, however, were not attentive to the intereſts of England alone. The national importance of the colonies being now apparent, it was aſſumed as a maxim of true policy, that all poſſible encouragement ſhould be given to them. The people of England and of Ireland, incited by the demand of former times, had begun early to cultivate tobacco; which they continued to do, notwithſtanding the proclamations

mations of James and Charles before-mentioned. But the legiſlature now enacted: [12] That no tobacco ſhall be planted, or made, within England or Ireland, Guernſey or Jerſey; that the ſheriffs and juſtices of the peace ſhall deſtroy all that they ſhould find growing contrary to that act; giving as a reaſon for this memorable prohibition, that the plantations of this kingdom in America ought to be defended and maintained, becauſe conſiderable dominions had been added to the imperial crown of this realm; that tobacco, being one of their main productions, ought to be promoted, becauſe what is planted in theſe parts is not ſo wholeſome for the takers thereof, and his majeſty would be deprived of a conſiderable revenue on the importation of it. Thus the ſupreme power extended its ſuperintendence over every dominion of the crown: The monopolies, which were then eſtabliſhed, being plainly reciprocal, reſtrained the colonial trade to England, and conferred the ſole production of tobacco on the plantations.

Having ſat from April, 1660, to the end of the year, the commons were then obligingly diſſolved by a monarch who owed to them his crown. Among other gracious expreſſions, he ſaid: "That former parliaments, "from what they had done, had received particular denominations; that "they had been ſtiled learned and unlearned; and ſome had worſe epithets: "I pray let us all reſolve, that this be for ever called the healing and "bleſſed parliament." Happy had it been, for his own reputation at leaſt, had Charles II. ſteadily purſued, during the extent of his adminiſtration, the rule which he thus laid down for his future conduct: "What is a parliament like to think of this action or of this council?" [13]

That prince had received ſo many proofs of the attachment of the colonies, during the ſeaſon of trial, New-England only excepted, that he judged rightly, when he preſumed they would liſten to the news of his reſtoration with pleaſure, and ſubmit to his juſt authority with alacrity. Nor was he in the leaſt deceived. They proclaimed his acceſſion with a joy in proportion to their recollection of their late ſufferings, and to their hope of future bleſſings. Of the recent conduct of Maſſachuſets he was well inſtructed; he foreſaw what really happened, that it would receive the tidings of his good fortune with extreme coldneſs; he was in-

formed of the proceedings of a ſociety which aſſembled at Coopers-hall, in order to promote its intereſts, and with them the good old cauſe of enmity to regal power: And, in May, 1661, he appointed the great officers of ſtate a committee, "touching the ſettlement of New-Eng-"land."[14] That prince and that colony mutually hated, contemned, and feared, each other, during his reign; becauſe the one ſuſpected its principles of attachment, the other dreaded an invaſion of privileges.

The illuſtrious Clarendon, however, inſpired his ſovereign with true notions of the nature and the utility of the plantations. And the inſtructions,[15] which were tranſmitted to Sir William Berkeley, the governor of Virginia, ſoon after the Reſtoration, demonſtrate the truth of this obſervation. He was empowered and required: To call an aſſembly as ſoon as might be, and to aſſure it of the royal intention to grant a general pardon and oblivion to all perſons, thoſe only excepted who were attainted by act of parliament; provided that body ſhall repeal all acts made during the rebellion, derogatory from the obedience, "which the "colonies owe to us and our government:" That, if any attainted perſons, either now are in that dominion, or ſhall come thither, to cauſe them to be ſent to England: To leave it to the aſſembly to do what is beſt for the plantation; giving a reaſon worthy of the king of a commercial country, that, though he had been ſolicited to ſtint tobacco, and to reſtrain the number of ſhips, yet he meant to promote the general good and their future advancement, and not private profit: To confirm any impoſition the aſſembly ſhould think fit to make for the good of the colony and the ſupport of government; applying one thouſand pounds as his ſalary, and the remainder for the general encouragement: To tranſmit an account of all tobacco ſhipped from that colony; in order that every one might be puniſhed who tranſgreſſed the act of navigation: To revoke ſuch grants of land as had been made contrary to the inſtructions of Charles I. and the good of the people; becauſe the ſelfiſhneſs of individuals had converted what was intended as a bleſſing into a curſe, by appropriating large portions of territory, which they could not cultivate, and which had been exempted from the payment of quit-rents for ſeven years: To tranſmit his opinion of the practicability of eſtabliſhing an

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iron work, " which is propoſed to be undertaken by ourſelf;" but a project, which requires the greateſt attention while directed by the fruitful hand of individuals, muſt have proved a fruitful ſource of expence when guided by that of a careleſs prince. Sir William Berkeley executed his truſt with great attention and ability.

The Reſtoration, which had occaſioned ſuch uncommon feſtivity in England, gave the greateſt ſatisfaction to the Virginians. They no longer dreaded the chaſtiſement of the late ruling powers for their forward proclamation of their prince: There was now re-eſtabliſhed that conſtitution which had formerly given their hearts content. During this joyous ſeaſon, the grand aſſembly was convened in March, 1662, agreeably to the governors inſtructions. With a laudable attention to the royal inclinations it reviewed the whole body of laws: Giving, as a reaſon, what ſhews equally its preſent temper as its recent miſeries; " that " the late unhappy diſtractions had cauſed frequent change in the go- " vernment, which produced ſo many alterations in the laws, that the " people knew not what to obey, or the judges what to puniſh, propo- " ſing to adhere to thoſe excellent and often refined cuſtoms of England, " as nearly as the capacity of the country would admit, to which it ac- " knowledged all obedience." Eccleſiaſtical affairs being the firſt object of its attention, the church of England was now, with the approbation of the people, regularly eſtabliſhed: Churches were ordered to be built; glebes were laid out, and veſtries were appointed; miniſters, who had received their ordination from ſome biſhop in England, were alone to be inducted by the governor: And all others were prohibited from preaching, upon pain of ſuſpenſion or baniſhment. " In order to ſhew its " deteſtation of the barbarous maſſacre of the late king Charles, of ever " bleſſed memory," the 30th of January was ordered to be ſolemnized with faſting and with prayers: And, " in teſtimony of the joy of the " colony for the happy reſtitution of Charles II. the 29th of May was " appointed to be annually celebrated as a holyday." The charge of aſſemblies being much augmented by the great number of burgeſſes unneceſſarily choſen, it was enacted: That no county ſhall ſend above two, except James-Town, the capital, which may ſend one; that every diſ-

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trict, which ſhall people a hundred acres of land with the ſame number of tithable perſons, ſhall be allowed a ſimilar privilege: And that the burgeſſes, who ſhould be thus choſen, ſhall not be arreſted during the ſitting of aſſemblies or for ten days thereafter. With the ſame attention the courts of juſtice were regulated. Crimes puniſhable with loſs of life or limb were to be tried at the general-court. For the due adminiſtration of juſtice in the ſeveral counties, and for the greater eaſe of the people, the governor and two of the council were appointed to go the circuit: County-courts were eſtabliſhed, which were empowered to determine ſmall crimes and miſdemeanours, "according to the laws of England and "of that country;" to grant letters of adminiſtration and probate of wills. Thus was finally erected that ſyſtem which has continued to the preſent times, becauſe it was approved by the people. As that deſerved favourite, the trial by jury, had been diſcontinued during the late confuſions, and that they might in all their proceedings come as near as poſſible to the laws of England, "by which they were to be governed," it was now once more reſtored: This regulation alone is ſufficient to demonſtrate the extreme ignorance or temerity of thoſe who ruled Virginia during the uſurpation, who were probably afraid to truſt the deciſion of cauſes to an impartial jury of the country. When the aſſembly conſidered how much of the late miſery had ariſen from the falſehood of rumour, it enacted a law, extremely neceſſary in a territory diſtant from the ſeat of government, "againſt the divulgers of falſe news:" And, happy had it been for that colony, had a rule ſo promotive of internal quiet been carefully attended to and enforced.

A tax of two ſhillings a hogſhead on tobacco, exported, having been impoſed for the ſupport of government, with an exemption in favour of Virginian owners of veſſels, this important privilege was declared to extend to ſuch only "as ſolely and wholely belonged to the inhabitants of "this country." And, for their greater encouragement, they were afterwards exempted from the payment of caſtle-duties. The modern pretenſions of the colonies render theſe laws of exemption, which were dictated by the narrow ſpirit of corporations, or the never-failing jealouſy of ſubordinate legiſlatures, extremely intereſting; and it will be found, upon

on inquiry, that the practice of the colonial aſſemblies, of exempting thoſe who were repreſented, and impoſing it on thoſe who were not, has been univerſal at all times. The right of the aſſembly to aſſeſs thoſe various duties muſt have ariſen from its character of local legiſlature of the colony. For its component members then ſat in one apartment; and, though the burgeſſes, in order to put themſelves on an equality with the counſellors, provided againſt arreſts, yet they had then acquired no peculiar powers with regard to money, or indeed any other excluſive authority. Various other beneficial regulations were at the ſame ſeſſion eſtabliſhed, which long ſerved as the code of provincial juriſprudence. [16]

Nothing can ſhew more clearly than the laws which were then enacted how much Virginia had ſuffered during the uſurpation, its joy on the Reſtoration, its former and preſent attachments. It is an inſtance of moderation, which is worthy of imitation, and which proceeded probably from the example and orders of the government of England, that no act of puniſhment or of oblivion, with regard to late tranſactions, was paſſed: No other notice was taken of the late uſurpation than a declaration of the aſſembly, "that, in order to avoid like inconveniences, it had reviewed "the whole body of laws, expunging all the unneceſſary acts, and chiefly ſuch as might keep in memory the late forced deviation of the people "from his majeſty's obedience, and bringing into one volume thoſe that "are in force." [17] The Virginians were now bleſſed with a governor, who had ſhared in their adverſity, who now partook in their joy, and with that form of government, that had formerly given them ſo much ſatisfaction. And, as they neither felt the preſſures of grievance, nor experienced the fever of diſtruſt, they continued, for ſome time, in that deſirable but unimportant ſtate of tranquillity, which adds nothing to the ſtock of hiſtorical knowledge.

If, from that moſt ancient dominion, we turn our eyes to Maryland, we ſhall behold the exiſtence of ſimilar principles producing the ſame good effects. All obeyed willingly the commands of Charles II. becauſe all approved of his Reſtoration: And the province joyfully ſubmitted to the juſt authority of the proprietary, becauſe it had experienced his wiſe and equitable adminiſtration, which it had often approved of with gratitude.

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If we except the moderate puniſhment of Fendal, and his accomplice Gerard, for a recent and aggravated breach of truſt, the late uſurpations were paſſed over in ſilence, and buried in oblivion. During the general feſtivity for the re-eſtabliſhment of public quietude, the aſſembly was convened in May, 1662. When the freemen reflected "on the great hindrance "to the advancement of the colony in trade, from the want of money, "they beſought his lordſhip to take order for ſetting up a mint." It was enacted, that the money coined ſhall be of as good ſilver as Engliſh ſterling; that every ſhilling, and ſo in proportion for other pieces, ſhall weigh above nine-pence in ſuch ſilver; that the proprietary ſhall accept of it in payment of his rents and other debts; and this coin being afterwards circulated, the preſent was confirmed among the perpetual laws in 1676. But theſe acts being repealed, and the practice of coining having unhappily fallen into diſuſe, more pernicious projects for ſupplying the purpoſes of commerce ſucceeded: And this is the only law for coining money which occurs in colonial juriſprudence, if we except the ordinance of Maſſachuſets in 1652. An act "for port-duties" was at the ſame time paſſed; which conferred on the proprietary half a pound of powder and three pounds of ſhot for every ton burden of veſſels, not properly belonging to the province: And this was afterwards explained by a law, declaring, "that no veſſel, belonging to the province, ſhall be charge-"able with any port-duties whatſoever." [18] One letter in this act has occaſioned much political controverſy in Maryland. It has been contended, that the real intention of the legiſlature was, to grant a fort-duty, which, though given generally to the proprietary, was conferred merely as a truſt for the uſes of the public. The firſt aſſembly which met ſubſequent to the Revolution made a tender of the produce of this tax to William. But, though poor, he rejected, with a ſpirit that does him honour, a conſiderable revenue, which was preſſed upon him during the ardour of party zeal, becauſe his ſolicitor-general informed him, "that "the duty did belong to Lord Baltimore, to be received to his own uſe; "that it would be of dangerous conſequence to receive parole proof of an "intention in the legiſlature different from the words of the law." The tax was levied to the preſent times, though the refuſal and judgement of

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that monarch did not procure conviction, or enforce acquieſcence.[19] How finely do thoſe laws, and that conduct, demonſtrate how little the modern doctrine, with regard to taxation, was in thoſe days known or attended to, and how different has been, at all times, the practice of the colonies from their late precepts.

The felicity of the province was however conſiderably checked by the incurſions of the Janadoa Indians, whoſe name ſeems now extinct or forgotten. At the ſame time that military diſcipline was promoted, maintenance was provided for thoſe ſoldiers, who ſhould be maimed in defence of their country: But, by ſoliciting the aid of the Suſquehannahs, a very powerful tribe, the enemies of the province were repelled, probably annihilated.[20] And Maryland once more felt the bleſſings of peace, and of rational government, which it long happily enjoyed.

If, from the colonies of the South, we look to thoſe of the North, we ſhall diſcover that diſſimilarity of principle and of action which had always prevailed, which continues to form ſo remarkable a contraſt. During the frequent changes which enſued in England upon the death of Cromwell, Maſſachuſets acted, it ſhould ſeem, with a cautious neutrality. She refuſed indeed to acknowledge the authority of Richard, any more than that of the parliament or protector; becauſe all ſubmiſſion would have been inconſiſtent with her independence. She heard the tidings of the Reſtoration with that ſcrupulous incredulity with which men liſten to news which they wiſh not to be true. By a ſhip, however, which entered Boſton, in July, 1660, ſhe was exactly informed of the ſolemn proclamation of Charles II. And that veſſel brought two men, who were extremely qualified to give the moſt preciſe intelligence of the ſituation of affairs; no leſs perſons than the generals Whaley and Goffe, two of the infamous murderers of their king, who had fled from the approach of their ſovereign, and who dared not abide the judgement of thoſe laws of their country which they had ſo groſſly contemned. Far from concealing themſelves, they immediately waited on Endicot, the governor, "who received them very courteouſly." The univerſal regard, with which theſe men were entertained in New-England, ſhewed only the attachments of the people: It became not criminal till after it appeared

that they were attainted by act of parliament. So late as February, 1660-1, the governor and aſſiſtants refuſed to ſecure them. But finding it no longer ſafe to remain in that juriſdiction, as a warrant was iſſued in the ſubſequent month to ſeize them, they retired to Newhaven; "where they were well-treated by the miniſters and magiſtrates, and "ſeemed to be out of danger:" And they made themſelves known to Leate, the governor of Connecticut, who even then took no ſteps to detain them. Yet the royal proclamation, promiſing a reward for apprehending them, being publiſhed in the colony, they were conſtrained to abſcond. The univerſal favour, however, of the inhabitants, who probably pitied the unfortunate, though criminal, enſured their ſafety. They were joined in their retreat, in Connecticut, by Dixwell, another regicide, who was alſo attainted. And here, after a long and miſerable life, which became a burden to themſelves, they quietly breathed their laſt. Of theſe tranſactions Charles II. was perfectly informed; and with this conduct he afterwards reproached Maſſachuſets."

But neither was the king proclaimed, nor was there any change made in the uſual form of proceedings. And when the general-court convened, in October, 1660, though an addreſs to that monarch was propoſed and earneſtly preſſed by ſome, yet rumours being propagated, "that "England was in a very unſettled ſtate, that the people were greatly "diſſatisfied," theſe had then that mighty effect which they have always had within the colonies; and the motion was over-ruled: Alledging what ſhews the extent of the views of men; "that ſuch an addreſs might fall "into the hands of a committee of ſafety, or of other improper per-"ſons." A veſſel having at length brought certain intelligence of the complete ſettlement of affairs, with the joyful and univerſal approbation of the nation, of the complaints which had been preferred againſt thoſe in power to the king and to the parliament, a general-court was inſtantly called, in December, 1660. It was no longer the ſeaſon of debate. An addreſs to Charles was inſtantly agreed on, which was extremely different in ſtile and ſentiment from modern compoſitions, which juſtified the conduct of the colony, and prayed for protection of its rights, civil and religious, and which evinces with what eaſe oppreſſion generally deſcends

to

to ſycophancy. A ſimilar paper was tranſmitted to both houſes of parliament; and various letters were written to thoſe puritanic nobles who had degraded themſelves by ſacrificing their order, who loved Maſſachuſets better than England, "to intercede in behalf of the colony." Agreeably to ancient cuſtom, a day was appointed to beg the interceſſion of heaven, "to incline the king to accept favourably, and to anſwer, "the addreſs:" And it was preſented in February, 1660-1, and moſt graciouſly received. Leveret, the agent, was on that occaſion inſtructed: "Not only to engage as many members of parliament as poſſible to fa-"vour the cauſe of that people; but, ſhould he find the king and the "legiſlature propitious to them, to endeavour to procure the re-enact-"ment of the ordinance of 1642, that freed them from cuſtoms." But the times were extremely unfavourable to their views. The parliament had already eſtabliſhed the duties of tonnage and poundage over every dominion of the crown: And we ſhall find that no exemption from cuſtoms, which was now aſked for as a favour, was ever obtained till the ſad epoch when it was demanded as an indubitable right."

While the governor and council "were yet under no ſmall degree of "fear, and were alarmed with reports from all parts," they animadverted on a book which had been publiſhed, not long before, by Elliot, ſo famous in the ſtory of that colony as the apoſtle of the Indians, entitled, "The Chriſtian Commonwealth." They found it "full of ſe-"ditious notions in relation to all eſtabliſhed governments in the Chriſ-"tian world, eſpecially againſt the conſtitution of their native country." The elders were conſulted on a ſubject ſo momentous; and cenſure was deferred, that the author might make a public recantation in the mean time. He now condemned himſelf; and, as a public atonement, he acknowledged to the general-court, "that the conſtitution of England, by "king, lords, and commons, far from being antichriſtian, was not "only a lawful, but an eminent, form of government;" he bore teſtimony againſt ſuch expreſſions as juſtified the late innovators; and he confeſſed, "that all forms of civil government, deduced from ſcripture, "are of God, and ought to be obeyed for conſcience ſake." The books were ordered to be ſuppreſſed, and this diſavowal to be publiſhed.[23] How

much to be regretted is it, that men, whoſe conduct is in other reſpects commendable, whoſe duty leads them to inculcate peace and moderation, ſhould buſy themſelves in publiſhing ſuch writings! It is preſumptuous in the weak to impeach the authority of a ſyſtem which they do not comprehend: It is wicked in the intelligent to promulgate "ſeditious "notions, not only againſt that of their native country, but all eſta-"bliſhed governments in the Chriſtian world."

The general-court ſoon turned its attention to a ſubject of higher concernment; the preſent condition of affairs. In order rightly to underſtand that duty which the people owed to themſelves, and that obedience which was due to the authority of England, a committee at length reported a declaration of rights, which at once ſhews the extent of their claims, and their dexterity at involving what they wiſhed to conceal. The general-court reſolved: That the patent (under God) was the firſt and main foundation of the civil polity of that colony; that the governor and company are, by the patent, a body politic, which is veſted with power to make freemen; that theſe have authority to chooſe a governor, deputy-governor, aſſiſtants, and ſelect repreſentatives; that this government hath ability to ſet up all kinds of officers; that the governor, deputy-governor, aſſiſtants, and ſelect deputies, have full juriſdiction, both legiſlative and executive, for the government of the people here, without appeals, "excepting law or laws repugnant to the laws of Eng-"land;" that this company is privileged to defend itſelf againſt all who ſhall attempt its annoyance; that any impoſition, prejudicial to the country, contrary to any of its juſt ordinances, (not repugnant to the laws of England,) is an infringement of its rights. Having thus, with a genuine air of ſovereignty, by its own act, eſtabliſhed its own privileges, it decided "concerning its duties of allegiance:" And theſe were declared to conſiſt; in upholding that colony as of right belonging to his majeſty, and not ſubject to any foreign potentate, becauſe it had been accuſed, in England, of an inclination to ſell the country to the Spaniards; in preſerving his perſon and dominions; in ſettling the peace and proſperity of the king and nation, by puniſhing crimes, and by propagating the goſpel. It was at the ſame time determined, that the royal warrant

warrant for apprehending Whaley and Goffe ought to be faithfully executed; that, if any legally obnoxious, and fleeing from the civil juſtice of the ſtate of England, ſhall come over to theſe parts, they may not expect ſhelter."[24] What a delightful picture do theſe reſolutions diſplay of the embarraſſments of the general-court, between its principles of independence on the one hand, and its apprehenſions of giving offence to the ſtate of England on the other. It is unneceſſary to remark, that, notwithſtanding the ſtrong affirmations above-mentioned, there were no ſelect deputies allowed by the charter. And it would be improper, after what has been ſaid, to point out the neceſſary incongruity of a ſubordinate legiſlature, deciding with regard to its own privileges, and the ſpirit of aggrandizement which runs through the whole.

Mean-while various complaints were made, with great earneſtneſs, to Charles, againſt the governor and council. The Quakers repreſented their ſufferings, and begged for protection in language which required not the heightenings of eloquence, becauſe their oppreſſions were real and enormous. Gorges and Maſon ſet forth the uſurpations of the general-court over their colonies of New-Hampſhire and Main; and prayed for redreſs, by reſtoring them to their rights, ancient and indubitable. Informations were given of the premeditated delays in proclaiming the king. Many perſons appeared, and were examined with regard to a conduct which gave ſuch juſt offence. And that monarch, now ſeeing the principles and practice of Maſſachuſets in their genuine colours, commanded the governor and council "to ſend perſons to England, to an-"ſwer theſe various accuſations."[25] And his commands, for once, were attended with ſome real effect.

Information of all theſe proceedings in England haſtened the ſteps of that body. And, after various debates, the general-court, in Auguſt, 1661, gave directions "to proclaim Charles II. to be lawful king of "Great-Britain, and all other the territories to the ſame belonging; re-"cognizing him as its ſovereign lord."[26] But the authority from which that monarch derived his kingſhip was carefully concealed, in order that the people of that juriſdiction might conſider the whole as an election recent and provincial. As there exiſted no ordinance of Maſſachuſets, which

which placed the diadem on his head, from what ſyſtem of juriſprudence did he derive his ſovereignty over that territory? Neither that prince nor any of his ſucceſſors could claim any connexion with Engliſh colonies, or exerciſe any authority over them, but what they received from the laws of England, at leaſt ſince the right divine has been ſo completely exploded. And though the people of Maſſachuſets recognized Charles as their "lawful king," and thereby virtually admitted the efficacy of the ſyſtem whence he had derived his kingly office, yet they did not acknowledge explicitly the obligatory force of Engliſh laws. In what confuſion, contradiction, and perplexity, do men involve themſelves when they once depart from ſtrict principle, from the letter of the conſtitution, which their fathers had defended and tranſmitted! But what gave ſuch unfeigned joy over the empire was performed even at that late hour with a very bad grace at Boſton. With a characteriſtic ſourneſs, the general-court publiſhed an order the ſame day; "prohibiting all "diſorderly behaviour, and particularly that no perſon ſhall preſume to "drink his majeſty's health; which, ſays the prohibition, he hath in a "ſpecial manner forbidden." Yet that prince had given no other commands than what exiſted in the ordinances of Maſſachuſets; becauſe he was as little a foe to jollity as he was any friend to ſadneſs.[17] A ſecond addreſs was at the ſame time tranſmitted to him, couched in ſimilar terms as the firſt: Thus repairing, by the mere profeſſion of compliment, what was wanting in the ſincerity of action.

Farther intelligence being received "of what was doing in England, "to the prejudice of the colony," the governor called the general-court in December, 1661. "After much agitation and oppoſition," Bradſtreet and Norton were appointed agents to repair thither; and they were inſtructed: "To repreſent the coloniſts as his majeſty's loyal and obe-"dient ſubjects; to endeavour to take off all ſcandal and objecti-"ons; to diſcover his apprehenſions concerning them; to do nothing "prejudicial to the charter." Theſe men, however, undertook that thankleſs office with great reluctance. They departed: "Having firſt "received a public aſſurance, that all damages they might ſuſtain, by "the detention of their perſons in England, or otherwiſe, ſhould be "made

" made good to them."[28] But what muſt have been the guilt or the miſinformation of a people, who could conceive that the perſons of agents would be ſubjected to puniſhment for the offences of the whole, under ſuch a government as that of England!

Nevertheleſs, they were favourably received at the court of Charles; becauſe he was more forward to accept than they were to profeſs ſubmiſſion. They ſoon returned: Bringing with them the royal anſwer. Yet neither their conduct, which was probably miſrepreſented, nor the king's letter, gave general or perfect ſatisfaction; though that was ordered to be publiſhed, and a day of thankſgiving was appointed, " for " the return of the meſſengers, and the continuance of the mercies of " peace, liberty, and the goſpel." For there were ſome things, as we are aſſured, in the royal miſſive hard to comply with. That prince did thereby confirm the charter and all privileges contained in it; he promiſed to renew it under the great-ſeal, at what time ſoever it ſhould be deſired: And, with the unexampled ſpirit of forgiveneſs of thoſe times, he granted pardon to all his ſubjects for treaſons committed during the late troubles; thoſe only excepted who were attainted by act of parliament. But he required the general-court to review its ordinances, and to repeal ſuch of them as were repugnant to the royal authority; that the oath of allegiance ſhould be duly adminiſtered to every one; that the adminiſtration of juſtice ſhould be performed in his name; that freedom ſhould be granted to all who deſired to uſe the book of Common-prayer, and perform their devotions in the manner eſtabliſhed in England; that freeholders, not vicious, and of competent eſtates, ſhould be allowed to vote in the election of officers, civil and military, though they were of different perſuaſions in church-government. Some parts of this anſwer are ſaid to have cheered the hearts of the people: And they often afterwards recurred to it as an explicit confirmation of their chartered liberties, and as an amneſty of paſt errors. But of what was required by the king, to be performed by them on their parts, little was ever done. However reaſonable, however legal, may now appear the requiſitions of that prince, " many of them were then thought grievous by all, and as in-" troductory of popery by a few." Some of them they evaded with their accuſtomed

accuſtomed dexterity; with others they never complied; becauſe, in the ſmalleſt change, they dreaded farther innovation. The only one of all the above requeſts which were now performed, was, the giving of orders that all writs and other legal proceedings ſhould run in the royal name. And a committee was appointed to conſider which of the other requiſitions were proper to be adopted, and to report ſomething "which "might be ſatisfactory and ſafe, conducing to the glory of God, and to "the felicity of the whole."[29] By theſe means the inhabitants of that colony incurred then his diſpleaſure, which continued during his reign. And thus was laid the commencement of a long train of vexations to the prince, and of woes to the people; which ended only with his life, and with their enſlavement.

In the annals of territories, barren of incidents, and deſtitute of events ſtriking and ſplendid, like the adventures of the Spaniards of the South, attention can only be awakened, and the heart intereſted, by contraſting the colonies with each other, and their ancient ſtory with recent occurrences. The peculiar religion of the original coloniſts neceſſarily inſpired different ſentiments and very diſſimilar deſigns. The church of England of Virginia, the Roman-catholic of Maryland, naturally animated their votaries with love of their prince, attention to ancient forms, and attachment to their native country and its conſtitution. The congregational ſocieties of New-England equally infuſed a deſire of equality, impatient of any ſuperior, an anxiety for change, irreconcileable to any eſtabliſhment, and an affection for that colony which was ſuppoſed to be ſanctified by heaven, utterly inconſiſtent with any regard to the parent ſtate, or obedience to its laws. Actuated by ſuch principles, the conduct of the planters was, on all occaſions, extremely oppoſite to each other. During the momentous contentions of the reign of Charles I. thoſe of the South, we have ſeen, adhered to the royal cauſe and the conſtitution of their fathers, without diſregarding their rights as Engliſhmen: The people of New-England, *ſtirred up* the fire of civil diſſention, leagued themſelves with the promoters of innovation, and profited from the deplorable diſtractions of the parent. The former received the news of the Reſtoration with joy, eagerly proclaimed their king, and ſubmitted to the deciſion of parliament

parliament on that occaſion, with the attention of men, who deemed themſelves ſubjects, inveſted with Engliſh liberties, and therefore bound by Engliſh laws: The latter received the tidings of that intereſting event with a caution bordering on incredulity, announced the king in a manner almoſt inſulting, and ſubmitted not to the reſolutions of the ſupreme power, till they had, by their own reſolves, declared their own privileges. The religious principle before-mentioned affected conſiderably the perſonal virtues of the heart. While we admire their oppoſites in the planters of the Southern colonies, we muſt deteſt, in thoſe of the North, oppreſſion, deſcending, on proper occaſions, to ſycophancy, an affectation of ſuperior ſanctity bordering on blaſphemy, and a diſingenuouſneſs approaching to diſhoneſty. While the firſt, by education, by communication with ſtrangers, have refined their manners, have improved their taſte, and cultivated the elegant arts; the laſt, notwithſtanding the diffuſion of philoſophy, remained nearly in their original ſtate; and ſtrangers, during thoſe days, obſerved their peculiarities with that mixture of wonder and contempt, with which they generally behold a people different from all others almoſt in every thing. The ſingular maxims of both have deſcended to their poſterity with leſs variation than could have been foreſeen, and have conſtantly animated their conduct, private and political, to the preſent times.

AUTHORITIES AND NOTES.

[1] Hume's Eſſ. 1 v. p. 62. — [2] Commentaries, 4 v. p. 429-32.

[3] Freeman's Reports, p. 175; Modern Rep. 3 v. p. 159-60; Vaughan's Rep. 400; Modern Rep. 4 v. 225; Salkeld's Rep. 2 v. p. 6; and Commentaries, 1 v. p. 106-9.

[4] 12 Cha. II. ch. 4. — [5] Vaughan's Rep. p. 170. — [6] 2 An. ch. 9. — [7] 3 An. ch. 5. — [8] 21 Geo. II. ch. 2.

[9] 12 Cha. II. ch. 18. — It is extremely remarkable, that, as early as the year 1381, a law was paſſed with the ſame deſign, and almoſt in the ſame language. The ſtatute of 5 Rich. II. ch. 3. declared: "That, to in-" creaſe the navy of England, no goods or merchandiſes ſhall be either " exported or imported, but only in ſhips belonging to the king's ſub-

" jects." This, fays the truly intelligent obferver on the ftatutes, may be ſtiled the firſt navigation-act. — Obſerv. 261.

" To trace a principle is always intereſting, becauſe curioſity is gratified. During the reign of James I. it was for the firſt time decided, by all the judges of England, in the caſe of the *poſt-nati*, which has been reported, by Sir Edward Coke, with ſuch an elaborate diſplay of learning, " that perſons born in Scotland, ſubſequent to the acceſſion of that mo- " narch to the Engliſh throne, were natural-born ſubjects of England; " becauſe they drew their firſt breath under the ſame liegeance as " Engliſhmen." The inference of law, from this propoſition, was inevitable; " that both were equally entitled to the ſame privileges." The journals of parliament are full of applications, during the ſeſſions of that prince and his immediate ſucceſſor, for the naturaliſation of Scotſmen: But, as the *ante-nati* departed, this became unneceſſary. Though no veſſels could be carried directly from Scotland to the Engliſh plantations ſubſequent to the act of navigation, yet thither Scotſmen began to traffic, with their uſual ardour, in the reign of Charles II. they extended their operations during that of James II. and in that of William they procured and executed colonial offices of truſt and of profit. They naturally applied the principles above-mentioned to new ſituations and new circumſtances; concluding, juſtly, that they were entitled to the ſame rights in the colonies as they enjoyed within the realm. Yet the miniſters of William were extremely perplexed with regard to this ſubject; becauſe apprehenſion had not been quickened by intereſt. What is more amuſing than to remark the perplexities of wiſe men on ſelf-evident propoſitions? They continually applied to the crown-lawyers for advice: And theſe uniformly reported, " that Scotſmen were, in judgement of " law, natural-born ſubjects of England." The commercial ſpirit of the natives of Scotland was viewed nevertheleſs, within the plantations, with envy. Their veſſels were ſeized, by the governors and cuſtom-houſe officers, with avidity; becauſe they were to acquire forfeitures, and at the ſame time gratified thoſe over whom they ruled. But perſeverance overcame difficulties: And, among other opinions, was procured that of Sir John Hawles, who was the ſolicitor-general of King William, but who

who is now better known as the author of an admired treatiſe on juries: And his ſentiments diſplay the reaſonings of ſenſible men and able lawyers, during thoſe days, on a ſubject as well of curioſity as of uſe. — From Virg. Pap. C. N°. 4.

" Whether a Scotſman, that for three or four years has been in England or in the Engliſh plantations, or has been five or ſix years employed by Engliſhmen in navigating Engliſh ſhips from England to the plantations, or from plantation to plantation, may not act as a maſter or ſailor? Doth it any ways alter the caſe, whether ſuch Scotſman be married and a houſe-keeper, or unmarried and a lodger?

I think a native of Scotland will be accounted an Engliſhman, and will be well qualified to be maſter or mariner of an Engliſh ſhip, within the words of the act of navigation; they being by their births as much Engliſhmen as foreigners will be by an act of naturalization.

The word *Engliſh* in the ſaid acts being applicable to privileges of perſons born in England, muſt be conſtrued according to the rule of common law in like caſes: And ſince the union of the two crowns, at leaſt at this day, it has been undoubtedly held, that perſons born in Scotland ſhould have the ſame privileges as if born in England, as to the purchaſing freeholds, inheriting lands of inheritance here in England, and all other matters.

I think it will be the ſame thing where any act of parliament gives a privilege to an Engliſhman: For a Scotſman will be an Engliſhman by privilege, though a native of Scotland. Wherever the act mentions a ſubject of England and Ireland, I think the words *England* and *Ireland* will be redundant; ſo will be neglected: And conſequently will not exclude Scotchmen, without negative words. And I think ſuch acts will include all the king's ſubjects born in any other of the king's dominions than England or Ireland. I think it will not at all alter the caſe, whether ſuch a Scotchman be a houſe-keeper, or ſingle, or a married man.

By a clauſe in the act of 14 Cha. II. it is ſaid: " And whereas it is required by the act of navigation, in ſundry caſes, that the maſter and three-fourths of the mariners ſhall be Engliſh:" Is it to be underſtood,

that any of his majeſty's ſubjects of England, or Ireland, or of any of the plantations, are to be accounted Engliſh, and no other?

Q. Whether any thing herein contained doth alter the caſe of the Scotchman before-mentioned; and whether he is not to be accounted his majeſty's ſubject within the meaning of this clauſe?

Whatever might have been the intention of the parliament by that clauſe in the act; yet, ſince by law a man born in Scotland is a ſubject of England; and ſince the two kingdoms, as to matters of privilege, while they remain united under the ſame king, are accounted but one nation; the above clauſe will not exclude a Scotchman from being an Engliſh ſubject."

REMARK. We may infer, then, that all perſons born within the dominions of the king of Great-Britain, owing allegiance to him, and yielding obedience to the laws, are entitled to the ſame equal privileges; varied only by the inequalities of nature, the diſtinctions of ſociety, the diſabilities of ſituation. And the common law of England, with a ſpirit favourable to coalition, to diſunion adverſe, would have adopted the Hanoverians: But they have been excluded, it ſhould ſeem, by what Sir John Hawles called "negative words;" by poſitive ſtatute. And thence it appears, that the whole reaſonings lately employed in ſupport of the rights of the coloniſts, though not of their independence, end in this ſimple affirmation: "We are Engliſhmen." Inconſiſtence of principle, as well as incongruity of inference, only aroſe, when it was thence aſſerted: "We are conſequently not bound by Engliſh laws."

" The following letter, of the lords of the committee of colonies, to the governors of the plantations, not only ſupports the reaſonings in the text, but ſhews that the act of navigation was contemned from the epoch of its enactment, and evinces how early began the exertions of Engliſh ſtateſmen to enforce that favourite law. — From New Eng. Ent. 1 vol. p. 11.

Whereas, by a late act for encouragement of ſhipping, all foreign trade is prohibited to any of his majeſty's plantations; and all thoſe of his majeſty's ſubjects that ſail unto any of them are required to give ſecurity

curity to return, with their lading, to England or Ireland, as in the ſaid act is expreſſed, with ſtrict command to the governors of the ſaid plantations to ſee the ſame performed accordingly, with great penalties on ſuch governors as connive or neglect putting the ſaid act in execution, who are enjoined alſo to take an oath that the ſaid act be punctually obſerved: Yet, being informed by maſters of ſhips and others trading to Virginia, Maryland, and others his majeſty's plantations, of many neglects, or rather contempts, of his majeſty's commands for the true obſervance of the ſaid act, (which ſo highly concerns the increaſe of ſhipping, and the regulation of the trade of the plantations, together with his revenue that proceeds from thence,) by trading into foreign parts from Virginia, Maryland, and other plantations, both by ſea and land, as well into the Monadoes, [New-York,] and other plantations of the Hollanders, as into Spain, Venice, and Holland; occaſioned through the neglects of thoſe governors, in not taking a view of all foreign-built ſhips which come into their plantations, whether they have a certificate of their being made free according to the act, as alſo in not duly taking bond (before any ſhip be permitted to lade) that whatever commodities they ſhall take in at any of his majeſty's plantations, the ſame ſhall be carried to ſome other of his majeſty's plantations, or into England or Ireland; which bonds are to be returned twice every year into the office of the cuſtom-houſe, in London: But hitherto it hath not been done; of which neglect and contempt his majeſty is ſenſible, and therefore doth require and command you, that, for the time to come, a perfect account be kept by you, in that plantation, of all ſhips that ſhall load there, and return the names both of the maſters and the ſhips, together with true copies of all ſuch bonds as ſhall be taken by you there, twice in every year, unto the office of the cuſtom-houſe, in London, as aforeſaid; which, if you ſhall forbear to do, upon information thereof, and that any ſhips freighted there, ſhall, contrary to the law, trade into foreign parts, his majeſty will interpret it a very great neglect in you, for which he is reſolved to cauſe the breach of the ſaid act to be proſecuted according to the tenor thereof, and diſcharge you from that employment: It being his pleaſure that the ſaid law be very ſtrictly obſerved, in regard it much concerneth

cerneth the trade of his kingdom. All which we have thought fit to let you know, that you may not pretend ignorance, but obſerve all ſuch orders as are directed by the ſaid act, whereof you are not to fail, as you will anſwer the contrary at your peril. And ſo, &c.

(Signed)

Whitehall,
24 June, 1663.

CLARENDON, C.
and other lords.

REMARK. But though the above letter was circular, there is reaſon to believe that it was not tranſmitted to Maſſachuſets. For, in May, 1675, the committee of colonies applied to the lord-treaſurer Danby, "to underſtand the opinion of the commiſſioners of the cuſtoms how far the "acts of trade take cognizance of New-England." — Ib. 24. — And he ſoon after ſent the committee the ſubjoined report. — From N. Eng. Ent. 2 v. p. 29.

1ſt Q. How far the acts of navigation take notice of New-England?

A. We conceive that New-England (being one of the plantations under his majeſty's government) is equally ſubject to thoſe laws which relate to the plantation trade.

2d Q. What violations thereof we have obſerved by the inhabitants of that country?

A. That, before the act 25° reg. which impoſed certain duties, ſeveral of thoſe commodities were brought thither, and thence exported to foreign parts. But, ſince making that law, and officers are appointed to put it in execution, we hope that may be in a great meaſure prevented. Informed, that ſhips load the manufactures of Europe, and carry them directly to New-England.

3d Q. What inconvenience and loſs?

A. New-England is made a ſtaple, which England ought to be. — Remedy. The governors to take the oaths required; bonds to be taken; ſeizures to be made.

[12] 12 Cha. II. ch. 34. — [13] Com. Jour. 8 v. p. 236-7. — [14] New-Eng. Ent. 1 v. p. 1-2. — [15] Virg. Ent. 1 v. p. 265. — [16] Laws, p. 1, 59. — [17] Preamble to the Laws, p. 1. — [18] Bacon's Laws, 1661, ch. 14, 4-7.

[19] Right

[19] Right to the Tonnage ſtated, p. 7-8. — [20] Bacon's Laws, 1661, ch. 1, 6, 8, 12.

[21] Neal's N. Eng. 1 vol. ch. 8; Hutch. Hiſt. 1 v. p. 209-19. — The following depoſition confirms as well the text, as ſhews how well informed was Charles II. of what paſſed at Boſton. — From N. Eng. Papers, 3 vol. N° 14.

John Crown, gentleman, maketh oath, that, while he was at Boſton, in New-England, ſoon after his majeſty's happy Reſtoration, Goffe and Whaley, two of the execrable murderers of his majeſty's royal father, of bleſſed memory, landed there; and, at their landing, were conducted to the houſe of John Endicot, then governor of the Maſſachuſets colony, and that it was reported, by all the deponent converſed with, that the ſaid governor embraced them, bade them welcome to New-England, and wiſhed more ſuch good men as they would come over. That, after the ſaid Goffe and Whaley reſided ſome time at Boſton, viſiting and being viſited by the principal perſons in the town, and that, among others, they viſited Mr. John Norton, the teacher of the principal independent church in the ſaid town, and one of thoſe who came over with the addreſs and letter of the ſaid colony to his majeſty: That the deponent then boarded in the houſe of Mr. Norton, and was preſent when they viſited him, and that he received them with great demonſtrations of tenderneſs; that, after this the ſaid Goffe and Whaley went and reſided in Cambridge, (the univerſity of New-England, of which the deponent was a member,) and that, having acquaintance with many of that univerſity, he inquired of them how the ſaid Goffe and Whaley were received; and that it was reported to him by all perſons, that they were in exceeding great eſteem for their parts; that they held meetings in their houſe, where they preached and prayed, and gained univerſal applauſe and admiration, and were looked upon as men dropped down from heaven; that this was the phraſe of all the deponent heard diſcourſe about them, but that penitence for the horrid murder for which they fled did not appear to be any part of that piety, which ſainted them in their eſteem, for that Whaley ſaid openly, almoſt in all places where he came, that, if what he had done againſt the king

were

were to be done, he would do it again; and that it was the general report of the place, that he was frequently heard to ſay theſe words: That in the aforeſaid town Whaley and Goffe reſided, until commands came from his majeſty to the governor of Maſſachuſets for their apprehenſion; but that thoſe commands were neither executed, nor, to the beſt of the deponent's remembrance, publiſhed, nor any proclamation or order, by their own authority, iſſued out for it; otherwiſe it had been almoſt impoſſible for the murderers to eſcape as they did, by reaſon of their living and converſing ſo publicly, and their having no places to fly to, beſides there being ſeveral loyal perſons in Boſton, (though no members of the church or ſtate,) who, if they might have had permiſſion from the government, would have ventured to ſeize them: And the deponent doth likewiſe remember, that, being afterwards in company of ſeveral merchants at Boſton, and diſcourſing of Hugh Peters and his execution, ſome perſons did there ſay, that there were many godly in New-England that dared not condemn what Hugh Peters had done.

REMARK. Lord Say and Seal, when his glaſs was almoſt run out, informed the governor of Maſſachuſets, in July, 1661; "I muſt ſay, for "Mr. Crown, he hath appeared both here, in the council, and to the "Lord Chamberlain and others, as really and cordially for you as any "could do, and hath allayed the ill opinion of your cruelty againſt the "Quakers. — I muſt requeſt you will accordingly requite Mr. Crown "his love, care, and pains, for you." — See the letter in Hutch. Hiſt. 1 vol. 220.

[22] Hutch. Hiſt. 1 vol. 210-11. — Candour requires, that, as all men ſhould be allowed to ſpeak their own juſtification, the people of Maſſachuſets ſhould be permitted to tell their own ſtory their own way: The addreſs of the general-court is therefore ſubjoined. — From N. Eng. Papers, 4 vol. p. 490.

"Moſt gracious and dread ſovereign,

May it pleaſe your majeſty (in the day wherein you happily ſay, you now know, that you are again king over your Britiſh Iſrael) to caſt a favourable eye upon your poor Mephiboſeths now, and by reaſon of lameneſs,

neſs, in reſpect of diſtance, not until now appearing in your preſence, we mean New-England, kneeling, with the reſt of your ſubjects, before your majeſty, as her reſtored king. We forget not our ineptneſs as to theſe approaches. We at preſent own ſuch impotency, as renders us unable to excuſe our impotency of ſpeaking unto our lord the king: Yet, contemplating ſuch a king, who hath alſo ſeen adverſity, that he knoweth the hearts of exiles, who hath been himſelf an exile, the aſpect of majeſty, thus extraordinarily circumſtanced, influenceth and animateth exanimated outcaſts, (yet outcaſts as we hope for the truth,) to make this addreſs unto their prince, hoping to find grace in his ſight: We preſent this ſcrip, the tranſcript of our loyal hearts, into your royal hands, wherein we crave leave:

To ſupplicate your majeſty for your gracious protection of us, in the continuance both of our civil privileges, according to (and of our religious liberty, the grantees known end of) the patent conferred upon the plantation by your royal father. This, this, viz. our liberty to walk in the faith of the goſpel, with all good conſcience, according to the order of the goſpel, (unto which the former, in theſe ends of the earth, are but ſubſervient,) was the cauſe of our tranſporting ourſelves, with our wives, our little ones, our ſubſtance, from that pleaſant land, over the Atlantic Ocean, into this vaſt and waſte wilderneſs; chooſing rather the pure ſcripture worſhip, with a good conſcience, in this poor remote wilderneſs, among the heathens, than the pleaſures of England, with ſubjection to the then ſo diſpoſed and ſo far prevailing hierarchy, which we could not do without an evil conſcience. For this cauſe we are this day in a land, which lately was not ſown, wherein we have conflicted with the ſufferings thereof much longer than Jacob was in Syria. Our witneſs is in heaven, that we left not our country upon any diſſatisfaction, as to the conſtitution of the civil ſtate: Our lot, after the example of the good old non-conformiſt, hath been only to act a paſſive part, through theſe late viciſſitudes and ſucceſſive overturnings of ſtate; our ſeparation from our brethren in this deſert hath been, and is, a ſuffering, bringing to mind the application of Joſeph; but providential exceptions of us thereby from the

late wars, and temptation of either party, we account as a favour from God; the former clothes us with ſackcloth, the latter with innocency.

What reception, courteſy, and equanimity, thoſe gentlemen and other adherers to the royal intereſt, who in adverſe changes viſited theſe parts, were entertained with amongſt us, according to the meanneſs of our conditions, we appeal to their own reports.

Touching complaints put in againſt us, our humble requeſt only is, that, for the interim wherein we are dumb, by reaſon of abſence, your majeſty would permit nothing to make an impreſſion upon your royal heart againſt us, until we have opportunity and licence to anſwer for ourſelves. Few will be nocent, ſaid that impleader, if it be enough to deny; few will be innocent, replied the then emperor, if it be enough to accuſe.

Concerning the Quakers, open capital blaſphemers, open ſeducers from the glorious Trinity, the Lord's Chriſt, our Lord Jeſus Chriſt, the bleſſed goſpel, and from the holy ſcriptures, as the rule of life, open enemies to government itſelf, as eſtabliſhed in the hands of any but men of their own principles, malignant and aſſiduous promoters of doctrines directly tending to ſubvert both our church and ſtate: After all other means, for a long time uſed in vain, we were at laſt conſtrained, for our own ſafety, to paſs a ſentence of baniſhment againſt them, upon pain of death; ſuch was their dangerous, impetuous, and deſperate, turbulency to religion and to the ſtate, civil and eccleſiaſtical, as that, how unwilling ſoever, could it have been avoided, the magiſtrate at laſt, in conſcience both to God and man, judged himſelf called, for the defence of all, to keep the paſſage with the point of the ſword held towards them: This could do no harm to him that would be warned thereby; their willingly ruſhing themſelves thereupon was their own act, and, we with all humility conceive, a crime, bringing their bloods upon their own heads. The Quakers died not becauſe of their other crimes, how capital ſoever; but upon their ſuperadded preſumptuous and incorrigible contempt of authority, breaking in upon us notwithſtanding the ſentence of baniſhment made known to them: Had they not been reſtrained, ſo far as appeared, there was too much cauſe to fear that we ourſelves muſt quickly have died,

died, or worſe; and ſuch was their inſolency, that they would not be reſtrained but by death; nay, had they at laſt but promiſed to depart the juriſdiction, and not to return without leave from authority, we ſhould have been glad of ſuch an opportunity to have ſaid they ſhould not die.

Let not the king hear mens words; your ſervants are true men, fearers of God and the king, and not given to change, zealous of government and order, orthodox and peaceable in Iſrael: We are not ſeditious as to the intereſt of Cæſar; nor ſchiſmatics as to matters of religion; we diſtinguiſh between churches and their impurities; between a living man, though not without ſickneſs and infirmities, and no man. Irregularities, either in ourſelves or others, we deſire may be amended; we could not live without the worſhip of God; we were not permitted the uſe of public worſhip without ſuch a yoke of ſubſcription and conformity as we could not conſent unto without ſin. That we might, therefore, enjoy divine worſhip without human mixtures, without offence either to God or man or our conſciences; we, with leave, (but not without tears,) departed from our country, kindred, and fathers houſes, into this Patmos; in regard whereunto, we do not ſay our garments are become old by reaſon of a very long journey, but that ourſelves, who came away in our ſtrength, are, by reaſon of very long abſence, many of us become grey-headed, and ſome of us ſtooping for age. The omiſſion of the prementioned injunctions, together with the walking of our churches, as to the point of order in the congregational way, is all wherein we differ from our orthodox brethren.

Sir, we lie not before your ſacred majeſty: The Lord of Gods, the Lord God of Gods, he knoweth, and Iſrael he ſhall know, if it were in rebellion or ſchiſm that we willingly left our dwelling in our own, or continue our dwellings in a ſtrange, land, ſave us not this day.

Royal Sir, if, according to our humble petition and good hope, the God of the ſpirits of all fleſh, the Father of mercies, (who comforteth the abject,) ſhall make the puniſhment of the bereavement of that all, for which we do leave and do ſuffer the loſs of all, precious, ſo precious, in your ſight; or that your royal heart ſhall be inclined to ſhew unto us that kindneſs of the Lord in your majeſty's protection of us in theſe li-

berties, for which we hither came, and which hitherto we have enjoyed, upon Hezekiah's ſpeaking comfortably to us as to ſons; this orphan ſhall not continue fatherleſs, but grow up as a revived infant under its nurſing-father: Theſe churches ſhall be comforted in a door of hope opened by ſo ſignal a pledge of the lengthening of their tranquillity; theſe poor and naked gentiles, not a few of which through grace are come and coming in, ſhall ſtill ſee their wonted teachers, with encouragement of a more plentiful increaſe of the kingdom of Chriſt among them; and the bleſſing of your poor afflicted (and yet we hope truſting in God) ſhall come upon the head and heart of that great king, who was ſometime an exile as we are. With a religious ſalutation of our prayers, we (proſtrate at your royal feet) beg pardon for this our boldneſs; craving finally that our names may be enrolled among your majeſty's moſt humble ſubjects and ſuppliants.

JOHN ENDICOT, Gov. — In the name, and with the conſent of the general-court."

[22] The inſtructions, which are extremely remarkable, are in the collection of papers made by Mr. Hutchinſon, p. 328.

[23] Hutch. Hiſt. 1 v. p. 211, 12. — [24] Ib. 213; and ſee the Court's Declaration of Rights, appendix, N° 13. — [25] N. Engl. Ent. 1 v. 4-9-29; Hutch. Hiſt. 1 v. p. 219. — [26] See the proclamation, ib. 218. — [27] Ib. 219. — [28] Ib. 220. — [29] Ib. 220-3.

CHAP.

CHAP. XI.

Perſecution gives riſe to Providence; — to Rhode-Iſland. — The emigrants purchaſe lands of the Indians. — They enter into an aſſociation. — They procure a patent from the parliament. — The firſt aſſembly meets. — The government ſuſpended by the commonwealth. — The charter of Charles II. *— An aſſembly. — Remarks. — The reception of the royal commiſſioners. — Laws made to enforce the acts of trade. — Acceſſion of James* II. *— Articles exhibited againſt theſe colonies. — A writ of quo warranto iſſued. — They ſurrender their charter. — Government diſſolved. — They are joined to Maſſachuſets. — They reſume their charter upon the Revolution. — Remarks.*

HOW degrading is it to the cauſe of true liberty, civil and religious, that her zealous partiſans never fail to inflict on others what they will not themſelves endure! The original ſettlers of Maſſachuſets had ſcarcely landed on the American coaſt before they erected a ſimilar hierarchy to that from which they had fled with abhorrence "in-"to the remote wilderneſs among the heathens;" different indeed in name, but the ſame in principle and action. Retaliation perhaps might have naturally dictated the ſuppreſſion of the church of England. But what argument could juſtify the rancorous perſecution of thoſe ſectaries which neceſſarily ſprang from her former doctrines and preſent practices.

When Williams, the famous miniſter of Salem, diſapproving of that conduct, becauſe he inſiſted "for freedom of conſcience in worſhip, "even to Papiſts and Arminians, with ſecurity of civil peace," gathered a ſeparate ſociety of his followers, in the year 1634, he inſtantly attracted the notice of that jealous government. It was in vain for the miniſters of the other churches to endeavour to convince him of the irregularity of his conduct. He eaſily penetrated their ſhallow pretences "of not per-"ſecuting men for conſcience, but correcting them for ſinning againſt "conſcience, and ſo not perſecuting but puniſhing heretics." And the magiſtrates baniſhed him from their juriſdiction as a diſturber of the peace

peace of the church and commonwealth. When the ſentence of exile was publiſhed, the whole town of Salem, as we are aſſured, was in an uproar, becauſe he was eſteemed an honeſt man, and of popular talents in the pulpit. And, had not the miniſters of Boſton vigorouſly interpoſed, "he would have carried off the greateſt part of the inhabitants."[1]

Nevertheleſs, his diſciples, too zealous to abandon their leader, reſolved to hazard their lives and fortunes with him. They journeyed ſouthwards, in queſt of peace and ſecurity, without the juriſdiction of Maſſachuſets. Agreeably to one of their favourite maxims, which is ſo juſt and humane, they carefully cultivated the good will of the aborigines: And, having purchaſed a conſiderable tract of land of the Narraghanſets, who were then a powerful tribe, they eſtabliſhed there a ſettlement in the beginning of the year 1635; and naturally called it Providence. Here they entered into a voluntary aſſociation, ſimilar to thoſe we have remarked, for preſerving peace, and for making equal laws: Thus realizing in practice, becauſe they were few, what has been ſo often propoſed by theoriſts for mighty nations. They followed the example which Maſſachuſets had given them only five years before, becauſe they had the ſame natural right, and created a church, by collecting a religious ſociety: But proceeding, ſays their hiſtorian, from one whimſey to another, every one followed his own fancy, till religion itſelf at length grew into contempt, and public worſhip was generally neglected. What excellent leſſons of wiſdom do thoſe tranſactions offer to mankind! They ſhew them the danger of removing the foundations of thoſe eſtabliſhments, political and religious, which the wiſdom of their fathers had laid; becauſe, when men once depart from ancient and acknowledged principles, there is no boundary to innovation. At Providence, for almoſt half a century, did Williams rule; "employing himſelf continually in acts of kind-"neſs" to his perſecutors, affording relief to the diſtreſſed, offering an aſylum to the perſecuted.[2] And the liberal minded obſerved: That in this conduct alone was there more ſound religion than in the embodied churches of New-England.

But the baniſhmant of that miniſter did not procure either unanimity of opinion or conformity of practice, becauſe the principles of the Independents

pendents neceſſarily lead to diſunion. And a ſynod, which was convened in Auguſt, 1637, having condemned a variety of religious tenets, a freſh perſecution inſtantly commenced, according to the uſual maxims of Maſſachuſets. The Antinomians were disfranchiſed and baniſhed: They were led chiefly by Mrs. Hutchinſon, who "was well beloved, ſays Cot-"ton, the famous miniſter, and all the faithful embraced her con-"ference, and bleſſed God for her fruitful diſcourſes." They naturally followed the ſteps of Williams. And having arrived in his vicinity, they alſo entered into a treaty with the ſame tribe.[3] In March, 1638, two ſachems, by virtue of the command inveſted in them, and in conſideration of fifty fathoms of white beads, ſold, to Coddington and his aſſociates, the great iſland of Adquidnecke, and other iſles in Narraghanſet-bay, two only excepted which had been formerly diſpoſed of. And the native inhabitants ſoon after agreed, upon receiving ten coats and twenty hoes, to remove before the ſubſequent winter.[4] The larger was ſoon after denominated the iſle of Rhodes; and, by an eaſy declenſion, Rhode-iſland. Having thus acquired a title and poſſeſſion for conſiderations, which gave ſatisfaction to the original owners, here they planted: And, copying the conduct of their neighbours, they formed a ſimilar aſſociation for the eſtabliſhment of civil government. Though the numbers of the aſſociators were few, yet the ſoil being fruitful, and the climate agreeable, many perſons ſoon reſorted where they found protection; and the iſland, in a few years, became ſo populous as to ſend out coloniſts to the adjacent ſhores. Thoſe men are repreſented by Mather, an early writer of Maſſachuſets, "as a generation of libertines, familiſts, Antinomians, and "Quakers, whoſe poſterity, for want of ſchools and a public miniſtry, "are become ſo barbarous as not to be capable of either good Engliſh or "good ſenſe."[5] But that author, approving probably the example of the moſt poliſhed ſtates of antiquity, conſidered all as barbarians who differed from him in opinion or in action.

Having ſoon diſcovered, however, the inefficacy of voluntary government, and dreading the encroachments and violence of Maſſachuſets, the inhabitants of Rhode-Iſland and Providence ſent Williams to England, as their agent, in the year 1643. But, as Charles I. was now driven

driven from his capital, he naturally applied to thoſe who had engroſſed all power. His former aſſociate, Sir Henry Vane, received him with kindneſs, and promoted his views. Notwithſtanding the oppoſition of the other colonies of New-England, the two houſes of parliament granted, in March, 1644, a patent for the incorporation of the towns of Providence, Newport, and Portſmouth, for the abſolute government of themſelves; but according to the laws of England. Nothing can ſhew more clearly, than did the tranſaction before-mentioned, that, in the opinion of thoſe men, and of thoſe times, their voluntary aſſociations, or any act proceeding from themſelves alone, were inſufficient to legalize their ſettlements, to acquire a valid title to their lands, or juriſdiction to their governments. Williams ſeems to have been conſiderably regarded by the principal members of the parliament: And from them he brought with him a recommendatory letter to the governor and aſſiſtants of Maſſachuſets; repreſenting his merits and his ſufferings by their common enemy, the oppreſſors of God's people, the prelates; and recommending "the actual performance of all friendly offices, the ra-"ther becauſe of thoſe bad neighbours, which both were likely to find "too, too, near in Virginia." A recommendation, couched in ſuch terms, from ſuch men, naturally procured a profeſſion of chriſtian love, and mutual correſpondence: But, while he retained what were deemed dangerous principles of ſeparation, the governor and aſſiſtants thought it imprudent to grant him liberty of "ingreſs and egreſs, leſt the people "ſhould be drawn away with his erroneous opinions."[6] Yet what an admirable picture does this trivial tranſaction exhibit of the attachments and principles of all the parties! And thus the Virginians were hated, as well by parliamentary leaders, as by Maſſachuſets; becauſe they adhered to the religious and civil eſtabliſhments of their fathers, ſince they were not equally fond of innovation; becauſe they were firmly attached to their ſovereign, who now ſupported the falling conſtitution, though he had formerly been miſled.

When the wants of the colonies of New-England induced them in the mean time to think of a confederacy for mutual defence, theſe plantations were willing enough, as we are aſſured, to have joined with the reſt:

reſt: But Maſſachuſets, diſliking their principles, would not even admit them into treaty.[7] Neceſſity therefore obliged them to provide for their ſecurity by other means. They cultivated the friendſhip of the neighbouring ſachems with the greateſt ſucceſs; whereby they acquired conſiderable influence over their minds, which was of conſiderable importance: And that aſcendancy they employed, during the year 1644, to procure from the chiefs of the Narraghanſets a formal ſurrender of their country, which was afterwards called the King's Province, to Charles I. in right of his crown, in conſideration of that protection which the unhappy monarch then wanted for himſelf. Yet no meaſure could be more offenſive to Maſſachuſets, or could provoke more her reſentment; becauſe it was equally inconſiſtent with her uſual practice and preſent views of acquiring the ſubjection of the ſame territory to herſelf. The deputies of theſe plantations boaſted to Charles II. of the merits of this tranſaction, and at the ſame time "challenged the agents of Boſton to diſplay any "one act of duty or loyalty ſhewn by their conſtituents to Charles I. "or to the preſent king, from their firſt eſtabliſhment in New-England."[8] The challenge thus confidently given was not accepted.

Rhode-Iſland and Providence being thus left to themſelves, and being thus permitted by the parliament to manage their own affairs as they thought proper, naturally adopted ſimilar cuſtoms, and aſſumed the like policy, as thoſe of their neighbours. At length, in May, 1647, an aſſembly was convened, conſiſting, in the genuine ſpirit of democracy, of the collective freemen of the various plantations. Their neceſſities dictated many ſalutary regulations, which did not continue long in force, and deſerve not therefore to be now recorded. The whole executive power ſeems to have been inveſted in a preſident and four aſſiſtants, who were choſen from among the freemen by their ſeveral towns, and who formed the ſupreme court for the adminiſtration of juſtice. And every townſhip, forming within itſelf a corporation, elected a council of ſix, for the management of its peculiar affairs, and for the ſettlement of the ſmalleſt diſputes.[9]

Nevertheleſs, a form of government, which was ſo agreeable to their inclinations and their views, they did not enjoy long in tranquillity. It

was ſuſpended in October, 1652, by an order of the council of ſtate for the commonwealth. The parliament aſſuredly wiſhed to acquire a participation at leaſt in the adminiſtration of affairs, by eſtabliſhing here thoſe plans of reformation, which they attempted in Maſſachuſets, which they actually effected in Virginia and in Maryland. But Providence and Rhode-Iſland deriving the ſame advantage from the diſtractions which ſoon after enſued in England, that the colonies have always taken of the diſorders of the ſovereign ſtate, reſumed its former government: And this it continued to enjoy without farther interruption till the Reſtoration.[10]

That event gave great ſatisfaction to theſe plantations, becauſe they hoped to be relieved from that conſtant dread of Maſſachuſets which had ſo long afflicted them. And they immediately proclaimed Charles II. becauſe they wiſhed for protection, and intended ſoon to beg for favours. They not long after ſent Clarke as their agent to the court of that monarch, to ſolicit for a patent, which was deemed in New-England ſo eſſential to real juriſdiction. And in September, 1662, he obtained the object of his prayers. Yet, owing to the oppoſition of Connecticut, the preſent charter was not finally paſſed till July, 1663.[11] The emigrations before-mentioned from Maſſachuſets and the ſubſequent ſettlements at Providence and Rhode-Iſland were recapitulated; which, being convenient for commerce, ſays the patent, may much advance the trade of this realm, and greatly enlarge the territories thereof: And we being willing, ſaid that prince, to encourage the undertaking of our ſubjects, and to ſecure to them the free enjoyment of their civil and religious rights, which belonged to them as Engliſhmen, he conferred on them ample liberty in religion, and ſpecial privileges with regard to juriſdiction. The patentees, and ſuch as ſhould be admitted free of the ſociety, were incorporated by the name of "the governor and company of the Engliſh co-"lony of Rhode-Iſland and Providence." The ſupreme or legiſlative power was inveſted in an aſſembly; the conſtituent members of which were to conſiſt of the governor, the aſſiſtants, and ſuch of the freemen as ſhould be choſen by the towns; but the governor, or deputy-governor, and ſix aſſiſtants, were to be always preſent. Being thus conſtituted, the

the aſſembly was empowered to make ordinances and forms of government and magiſtracy, for the rule of the lands and inhabitants; ſo that they ſhould not be repugnant but agreeable to the laws of England, conſidering the nature of the place and people; to erect ſuch courts of juſtice, for determining all acts within the colony, as they ſhould think fit; to regulate the manner of elections to places of truſt and of freemen to the aſſembly; to impoſe lawful puniſhments, pecuniary and corporal, "according to the courſe of other corporations within the realm;" and to pardon ſuch criminals as they ſhould think fit. That the inhabitants might be religiouſly and civilly governed, a governor, deputy-governor, and ten aſſiſtants, were appointed for the management of their affairs: And they were authoriſed to execute the ordinances before-mentioned, which every one was commanded to obey. The governor and company were enabled to tranſport ſuch merchandiſe aud perſons as were not prohibited by any ſtatute of the kingdom, and "paying ſuch cuſtoms as are "and ought to be paid for the ſame:" They were empowered to exerciſe martial law; and, upon juſt cauſes, to invade and deſtroy the native Indians or other enemies. There was granted to the governor and company, and their ſucceſſors, "that part of the dominions of the crown, "in New-England, containing the iſlands in Narraghanſet-bay and the "countries and parts adjacent: To be holden of the manor of Eaſt-"Greenwich, in common ſoccage." The inhabitants of thoſe territories, and their children, were declared fully entitled to the ſame immunities as if they had reſided or had been born within the realm: And, to guard againſt the experienced oppreſſions of Maſſachuſets, they were enabled to paſs and repaſs through any other Engliſh colonies, and to traffic with them. But with this proviſo, that nothing ſhould hinder any ſubjects whatſoever from fiſhing on the coaſt of New-England.[12]

Such then is the ſubſtance of the charter of Rhode-Iſland; and ſuch were the privileges conferred by it. Corporations had formerly been erected within the realm for the government of the plantations; but now a body politic was created with ſpecific powers for ruling the colony within itſelf. Yet ingenuity or intereſt will ſcarcely diſcover in this tranſaction a grant of excluſive rights. Thoſe ſettlements were acknowledged

to be parts of the territories of the ſtate, the planters were conſidered as Engliſh ſubjects, and the authority of the ſupreme legiſlature was expreſſly referred to and ſaved. It required great addreſs, even when aided by the ſucceſſive inattention of Engliſh ſtateſmen, to extract from this patent a ſyſtem of independence.

Amid the ſatisfaction occaſioned by the obtention of the great object of the wiſhes of every one, an aſſembly, compoſed agreeably to the charter, was convened in March, 1663. Among a great variety of ordinances, which the circumſtances of the colony required, and which were enacted, one, "for declaring the privileges of his majeſty's ſubjects," is remarkable. It enacted: That no freeman ſhall be impriſoned, or deprived of his freehold, or condemned, but by the judgement of his peers, or the law of the colony; that no tax ſhall be impoſed or required of the coloniſts, but by the act of the general aſſembly; that all men of competent eſtates, and of civil converſation, Roman-catholics only excepted, ſhall be admitted freemen, or may chooſe or be choſen colonial officers. What abundant reflexions does this ordinance afford to the wiſe! Nothing is aſſuredly more incongruous than for a corporation, created with ſpecial powers, to endeavour, by its own act, to acquire privileges inconſiſtent with the patent which gave it exiſtence. Yet that law, plainly deſigned as its great charter, is manifeſtly repugnant to the grant. By it "none were at any time thereafter to be moleſted for any difference in "matters of religion." Nevertheleſs, a perſecution was immediately commenced againſt the Roman-catholics, who were deprived of the rights of citizens, and of the liberties of Engliſhmen, though they might have pleaded their chartered privileges: And, had the ordinance before-mentioned been inſiſted on, they might have juſtly contended, that the aſſembly could not make a regulation contrary to the royal act which gave it exiſtence. The corporation had been empowered to make laws which ſhould not be repugnant to the juriſprudence of England, yet the acts of aſſembly, and cuſtoms of the colony, were eſtabliſhed as the only rules of action. Did the coloniſts intend to exclude the juriſdiction of the ſupreme legiſlature they muſt have conſidered themſelves as aliens, and the aſſembly muſt have deemed itſelf poſſeſſed of co-ordinate or even independent

pendent power. Whatever were its views, the parliament had then actually impoſed duties on Rhode-Iſland, as a dominion of the crown, by the act of tonnage and poundage, they had regulated its trade by the laws of navigation: And we ſhall find them levying taxes on its inhabitants, notwithſtanding the ordinance before-mentioned. The ancient uſages and forms of theſe ſettlements were at the ſame time in a great meaſure re-eſtabliſhed and confirmed:[13] And the ſyſtem which was then erected has continued to influence their principles and conduct to the preſent times.

But though Rhode-Iſland and Providence had thus acquired legal juriſdiction, and had thus ſuperinduced additional powers, they did not enjoy either in tranquillity: A conſiderable part of their lands were claimed by their neighbours: They were involved in thoſe diſtractions and complaints which induced Charles II. to ſend commiſſioners to New-England, in the year 1664. Actuated partly by their religious and political tenets, but more by a ſenſe of their weakneſs, they received the royal deputies with the greateſt attention and deference. Their conduct received the warmeſt approbation of that prince. And he aſſured them, that he ſhould never be unmindful of their dutiful behaviour; which, he obſerved, was ſet off with the more luſtre by the contrary deportment of Maſſachuſets; as if, by its refractorineſs, it had deſigned to recommend and heighten their merits.[14]

Encouraged by theſe flattering diſtinctions, they were more moderate in their oppoſition to the rule of England, to the introduction of the acts of trade, than any of their neighbours. And that monarch having previouſly directed them to execute the acts of trade, the aſſembly, in May, 1682, enacted, that the governor ſhall appoint naval officers, to take entries of veſſels, to obſerve that the laws relating to navigation, or to cuſtoms on merchandiſe, ſhould be duly executed. But it was not till the year 1700, when the exiſtence of the charter and the independence of the ſettlements were equally in danger, that the governor was expreſſly empowered "to put the acts of navigation in execution."[15] Yet nothing could be more contradictory in principle than the two ordinances juſt mentioned. The former recognized the legality of the parliamentary taxation, and the acts of trade, as of force within the colony by their

proper

proper vigour; the latter proceeded, it ſhould ſeem, on thoſe reaſonings of Maſſachuſets, which we ſhall ſoon meet with, and enforced the regulations of trade by a law of their own. And theſe incongruities aroſe partly from their want of knowledge of the Engliſh conſtitution, of the principles of their connexion, perhaps more from the infection of the maxims and conduct of their neighbours. The ignorance and intelligence of both have at all times proved equally fatal to the intereſts of England. Yet the general ſtrain of the government of Rhode-Iſland and Providence was conciliatory, though independent, and ſeems to have given ſatisfaction to Charles II. during the remainder of his reign.

They immediately tranſmitted an addreſs to James II. on his acceſſion; acknowledging themſelves his loyal ſubjects, profeſſing obedience to his power, and begging protection for their chartered rights.[16] Yet the humility of their ſupplications could not protect them from the effects of thoſe plans of reformation for New-England which were now reſolved on. "Articles of high miſdemeanour" were exhibited againſt them before the lords of the committee of colonies, accuſing them of breaches of their charter, and of oppoſition to the acts of navigation.[17] Theſe charges were referred, in July, 1685, to Sawyer, attorney-general, with orders forthwith to iſſue a writ of quo-warranto againſt their patent: And formal notice of the legal proceſs was ſoon after communicated to the governor and company. But, without much heſitation, they reſolved, that they would not ſtand ſuit with their king. They paſſed an act, in full aſſembly, which we are aſſured "was afterwards made away "with, agreeably to a common practice," formally ſurrendering their charter, and the various powers contained in it.[18] By a freſh addreſs,[19] "they humbly proſtrated themſelves, their privileges, their all, at the "gracious feet of his majeſty, with an entire reſolution to ſerve him "with faithful hearts." What an excellent contraſt do theſe expreſſions form to recent declamations! Men of independent minds remarked, that ſuch language of ſubmiſſion equally diſhonoured both parties; becauſe it was as improper for free ſubjects to uſe, as for a king of England to receive. The addreſs was no ſooner received, than it was ordered by the committee of colonies, and approved by the king: That Sir Edmund Andros,

Andros, the governor of Maſſachuſets, ſhall demand the ſurrender of their charter, and govern them as other colonies of New-England; that prince aſſuring them of his protection, and of his determination to extend no other rule of adminiſtration over them, than over the neighbouring plantations. In December, 1686, Andros, agreeably to his orders, diſſolved the government of Rhode-Iſland; broke its ſeal; admitted five of its inhabitants into his legiſlative council; and aſſumed the adminiſtration in the place of that which he had thus annihilated.[20]

When the Revolution put an end to his power, Rhode-Iſland and Providence reſumed a charter, which had been thus ſolemnly ſurrendered, and which they have enjoyed to the preſent times, though not without interruption.[21] They probably reflected, that an act, which was extorted by terror, might be juſtly recalled when reſtraint no longer remained. But, unleſs it could be proved, that the whole proceeding was either irregular or illegal, their ſubſequent adminiſtration, without the formal aſſent of the ſovereign ſtate, muſt be conſidered, in notion of law, as mere uſurpation.

AUTHORITIES AND NOTES.

[1] Neal's N. Eng. 1 vol. p. 160; Dougl. Sum. 2 vol. p. 76-8; and ſee Williams's publication, in the year 1652, entitled, "The bloody Te-" nent yet more bloody." — [2] Neal's N. Eng. 1 vol. p. 160; Hutch. Hiſt. Maſſ. 1 vol. 37-9. — [3] Ib. 66-74. — [4] There is a curious copy of the Indian deed among the New-England Papers, bundle 3. p. 229. — [5] Dougl. Sum. 2 vol. p. 80. — [6] Hutch. 1 vol. p. 39; N. Eng. Pap. 3 vol. p. 25. — [7] Hutch. 1 vol. p. 124-5. — [8] There is a copy of the Indian Surrender in New-Eng. Papers, bundle 3; and ſee the ſame p. 25. — [9] Dougl. Sum. 2 vol. p. 80-1. — [10] Ib. — [11] Entries, titled, Proprieties, B. 171-9. — [12] See the charter annexed to the laws of Rhode-iſland; and a copy, examined with the Record in the Crown-office, in the Entries, titled, Proprieties, A. p. 123. — [13] Laws, p. 1-4. — [14] See the King's Letter in N. Eng. Pap. 3 vol. p. 22. — [15] Laws, p. 30-43. — [16] The addreſs is in New-Eng. Pap. 3 vol. p. 294.

[17] *Articles*

[17] *Articles of high miſdemeanour exhibited to the lords of the committee of foreign plantations againſt the governor and company of the colony of Rhode-iſland and Providence.* — From N. Eng. Ent. 2 vol. p. 245-6.

1. They raiſe great ſums of money upon the inhabitants of that colony and others, by fines, taxes, and arbitrary impriſonment, contrary to law, and deny appeals to his majeſty.

2. They make and execute laws contrary to the laws of England.

3. They deny his majeſty's ſubjects the benefit of the laws of England, and will not ſuffer them to be pleaded in their courts.

4. They keep no authentic record of their laws, neither will they ſuffer the inhabitants to have copies of them.

5. They raze and cancel their laws as they pleaſe, without the conſent of the aſſembly.

6. Their governor, deputy-governor, aſſiſtants, and deputies, and other officers for the adminiſtration of juſtice, are under no legal oaths.

7. They violate the acts of trade, and have taken from Thomas Brindley, Eſq. his late majeſty's commiſſion, appointing him and others to adminiſter an oath to the governor of that colony, for his duly putting in execution the acts of trade and navigation; the governor of that colony not having taken the ſaid oath theſe three or four years laſt paſt, as is required in the ſaid act.

All which is humbly ſubmitted.

EDWARD RANDOLPH.

[18] Proprieties, B. p. 171-2; Lond. Gazette of September 1686.

[19] *The addreſs of the governor and company of Rhode-iſland and Providence to James* II. — From N. Eng. Ent. 2 vol. 304.

Moſt dread ſovereign,

We, your majeſty's moſt dutiful and loyal ſubjects, do, with all humble and due ſubmiſſion, proſtrate ourſelves and privileges at your majeſty's feet, humbly acknowledging your majeſty's gracious favour, in your royal letters of the 26th of June, 1685, in the firſt year of your reign, directed to our honoured governor, wherein you are graciouſly pleaſed to ſignify; (we ſhall at all times extend our royal care and protection to them in the

the preſervation of their rights, and in the defence and ſecurity of their perſons and eſtates, which we do think fit that you ſhould ſignify to the inhabitants of that our colony.) We, your majeſty's moſt dutiful ſubjects, humbly acknowledge the receipt of your quo-warranto, by the hand of Edward Randolph, Eſq. againſt the charter of your majeſty's colony, which we received the 22d of June, 1686, requiring our appearance before his majeſty, wherever he ſhall then be in England, to anſwer, from the day of Eaſter, in fifteen days, which was the 22d of June, 1686: Notwithſtanding, in obedience to your gracious majeſty's commands, your governor and company convened, and, upon ſerious conſideration thereof, ſaw cauſe forthwith to publiſh and declare, by open proclamation, that they would not ſtand ſuit with your majeſty, but to addreſs themſelves to your moſt excellent majeſty for favour and relief, praying and imploring your princely bounty in our ſaid charter continued, both in religious and civil concernments; and the rather becauſe we are a people that have been and are real to your majeſty's intereſt, and deſpiſed by our neighbouring colonies. May it pleaſe your majeſty to know, that, before we received a quo-warranto, or ſo much as a copy of your majeſty's commands to the honoured preſident, Joſeph Dudley, Eſq. that the greateſt part of our colony was aſſumed from us, called the King's Province, which we did not oppoſe: And farther, we beg that, in your princely clemency, you will pleaſe to continue our privileges in *ſtatu quo prius*, with reſpect to indulgence in matters of religious concernments, and forming of oaths and atteſtations. And farther, we humbly petition your royal favour, that, foraſmuch as the port of Newport, in Rhode-iſland, lies in the heart of all your majeſty's colonies, it may be a free port for navigation and entries, *paying duties*. And farther, we humbly beg your majeſty's gracious favour herein, that no perſon may be impoſed over us that ſuits not the nature and conſtitution of your majeſty's ſubjects here, which his late majeſty, of bleſſed memory, was graciouſly pleaſed to indulge us in: And finally, we pray and beſeech your royal majeſty, that, in all things, wherein we have been weak and ſhort through ignorance, may be remitted and pardoned; and cannot but think, that, through the diſaffection of ſome, many things may have been miſrepreſented. All which

is humbly ſubmitted; and we beſeech your moſt excellent majeſty to accept hereof, proſtrating our all at your gracious feet, with our entire reſolution to ſerve our ſovereign with faithful hearts, praying for your majeſty's long life and proſperous reign over us. And we remain your majeſty's loyal ſubjects and ſupplicants.

Newport, Rhode-iſland,
3 July, 1686.

WALTER CLARK, governor.

[20] Proprieties, B. p. 171-2; N. Eng. Ent. 2 vol. p. 306-7.

[21] Ib; and ſee bundle of papers, Proprieties, E. p. 5-23. — The following anſwers to various inquiries tranſmitted formerly by the lords of the committee of colonies diſcloſe many remarkable particulars of the ſtate of thoſe ſettlements, at the expiration of five and forty years, as related by themſelves: The queries are implied in the anſwers, which are ſomewhat abridged. — From N. Eng. Papers, 3 vol. p. 122.

" Whereas we, the governor and council of the colony of Rhode-Iſland and Providence, have received ſeveral heads of inquiry from the lords of the council appointed a committee for the plantations, we make anſwer according to the beſt of our underſtandings as follows:

1. That the councils and aſſemblies are ſtated according to his majeſty's appointment in his gracious letters patent: And our courts of judicature are two in the year certain, appointed according to charter, and are carried on by judges and jurors.

2. Concerning the court of admiralty, we have made proviſion by act according to the laws of England, as well as the conſtitution of our place will bear; having but little occaſion thereof.

3. The legiſlative power is ſtated in the aſſembly; and the executive power of the government is, in the courts of trials, ſettled according to the charter.

4. The laws are made according to the charter; not repugnant, but agreeable, to the laws of England.

5. That, as for horſe, [cavalry,] we have but few; but the chief of our militia conſiſts of ten companies of foot; being train-bands under one commander; and their arms are firelocks.

6. That,

6. That, in the late Indian war, we fortified ourſelves againſt the Indians as neceſſity required: But, as for fortifications againſt a foreign enemy, as yet we have had no occaſion: However, we have made as good proviſion as at preſent we are capacitated to do.

7. That our coaſt is little frequented, and not at all at this preſent time, with privateers or pirates.

8. That the French, ſeated at Canada, and upon the bay of Fundy, are a conſiderable number; as we judge, about 2000: But as for the Indians, that were inhabitants of this colony, they are generally cut off by the late war.

9. That, as for foreigners and Indians, we have no commerce with them: But, as for our neighbouring Engliſh, we have, and ſhall endeavour to keep a good correſpondence with them.

10. The boundaries of the colony are as declared by the charter.

11. } That the principal place for trade is Newport; where the
16. } generality of the buildings are of wood, and ſmall. We have nine towns or diviſions. We have ſeveral harbours, of very good depth of water, navigable for any ſhipping. The principal merchandiſes that are exported are horſes and proviſions; and the goods chiefly imported are a ſmall quantity of the productions of Barbadoes for our own uſe.—We have ſeveral men who deal in buying and ſelling, though they cannot properly be called merchants; and, for planters, we conceive there are above 500, and about 500 men beſides. We have no ſalt-petre.

17. } We have lately had few or no new-comers, either of Engliſh,
20. } Scotch, Iriſh, or foreigners; only a few blacks imported. There may be, of whites and blacks, about two hundred born in a year.—We have 50 marriages a year. The burials for the laſt ſeven years, according to computation, amount to four hundred fifty and five.

21. } We have few merchants; but the moſt of our colony live com-
25. } fortably, by improving the wilderneſs. We have no ſhipping belonging to the colony, but only a few ſloops. The great obſtruction concerning trade is the want of merchants and men of conſiderable eſtates among us. A fiſhing trade might prove very beneficial, were there men

of property willing to carry it on. — As for goods, exported or imported, there are very few; and there is no cuſtom impoſed.

26. } Thoſe people who go under the name of Baptiſts and Quakers
27. } are the moſt that congregate together; but there are others of divers perſuaſions and principles, all which, together with them, enjoy their liberty according to his majeſty's gracious charter; wherein all our people in our colony are to enjoy their freedom of conſcience, provided that liberty extended not to licentiouſneſs: But as for Papiſts, we know of none among us. We leave every man to walk as God ſhall perſuade their hearts, and do actively or paſſively yield obedience to the civil magiſtrate, and have liberty to frequent any meetings of worſhip for their better inſtruction: — But, as for beggars and vagabonds, we have none among us; and as for lame and impotent perſons, there is a due courſe taken.

This may farther humbly inform your lordſhips, that our predeceſſors, about forty years ſince, left their native country and comfortable ſettlements there, becauſe they could not, in their private opinions, conform to the liturgy, forms, and ceremonies, of the church of England, and tranſported themſelves and families over the ocean ſeas, to dwell in this remote wilderneſs, that they might enjoy their liberty in their opinions; which upon application to his gracious majeſty, after his happy reſtoration, did of his bountiful goodneſs grant us a charter full of liberty of conſcience; in which ſaid charter there is liberty for any perſons that will build churches, and maintain ſuch as are called miniſters, without the leaſt moleſtation.

Rhode-Iſland,
Newport, 8 May,
1680.

In the behalf, and with the conſent,
of the council,
PELEG SANDFORD, Governor."

REMARK. The act before-mentioned, excluding Roman-Catholics from the privileges of freemen, was carefully concealed. It ought to be remembered, that the repreſentations of none of the colonial governments during thoſe days, eſpecially of thoſe which talked the moſt of religion, are to be implicitly relied on; becauſe they were all ſtrongly tinctured

tured with the principles of Wotton's ambaſſadors: And it was the policy of former times to depreſs the conſequence of the colonies, as much as it has been of late years to magnify their importance. Their hiſtorians have been ſomewhat infected with ſimilar prepoſſeſſions.

CHAP.

CHAP. XII.

Connecticut ſettled. — Conduct of Maſſachuſets on that occaſion. — Remarks. — The emigrants form an aſſociation and aſſert their independence. — Say-brook built by noblemen who intended to plant a colony. — Newhaven ſettled. — Forms a ſeparate ſtate. — The Pequod war. — Four colonies join in a confederacy. — They act as independent commonwealths during the civil wars. — Connecticut ſends an agent to England. — He obtains the charter. — Obſervations. — Newhaven admits her juriſdiction. — The conduct of both during the reign of Charles II. *— The adminiſtration of James* II. *— A writ of quo warranto iſſued againſt the charter. — Ancient government diſſolved. — Annexed to Maſſachuſets. — Reſumes the charter at the Revolution.*

CONNECTICUT, any more than Rhode-Iſland, was not originally ſettled by coloniſts from England, but by emigrants from the vicinity of Boſton. Actuated by the reſtleſs ſpirit of the times, theſe men had determined to remove as early as the year 1634. And they applied to the general-court of Maſſachuſets for permiſſion to go in queſt of new adventures in a better land. But, owing to a diviſion in that body, with regard to the propriety of the meaſure, they did not now obtain their deſires; "yet they could not be ſatisfied till they had accompliſhed "their intention, and had obtained the leave of the court." For, "it "was the general ſenſe, as we are aſſured, that the inhabitants were all "mutually bound to one another by the oath of a freeman, as well as "the original compact; ſo as not to be at liberty to ſeparate without "the conſent of the whole."[1]

Nothing could be more juſt and wiſe than this conduct and reaſoning. And this tranſaction evinces, that mankind will always think and act properly, except only when their underſtandings are perverted by the enticements of intereſt or faction. Yet the notion of the Independents before-mentioned is nothing more than the fundamental principle of ſociety: That the individual can no longer decide for himſelf, but muſt in all

all things ſubmit to the determination of the aggregate body. And the common-law of England has adopted what had been enforced by univerſal juriſprudence, becauſe it is ſo eſſential to the very exiſtence of every community. How much is it to be regretted, that the wiſeſt theoriſts ſhould have contended for a contrary doctrine; which is ſo fruitful in evils, accompanied with ſo little good; and which, in the preſent times, has been again broached and propagated with all the zeal of bigotry, but with leſs honeſt intentions! Nothing is ſo amuſing as to apply mens principles to their conduct. When the Independents of Maſſachuſets were about to depart from England, they obtained a licence which ſufficiently pointed out the nature of their future connexion with the ſtate: When they arrived on the farther ſhore of the ocean they deemed that relation to have ceaſed, as to all the purpoſes of practice: When their own aſſociates applied for leave to remove, they granted permiſſion; but ſtill conſidered them as citizens, who, in their new ſituation, owed ſubjection to the colony which they had thus abandoned.

The emigrants, under the conduct of Pynchon, and Hooker, and Haines, at length departed; and, after a fatiguing march through the wilderneſs, they, in June, 1636, pitched their tents on the weſtern bank of the river Connecticut; laying the foundation of the towns of Springfield, Hartford, and Weathersfield. The commiſſion which they carried with them from the general-court was, as we are aſſured, of a pretty extraordinary nature: It recited; that the lands, of which they intended to take poſſeſſion, were without the commonwealth of Maſſachuſets; that certain noble perſonages in England challenged the juriſdiction there, by virtue of a patent, but their minds, as to government, was unknown, and there was a neceſſity that ſome authority ſhould be eſtabliſhed: It therefore empowered Roger Ludlow to promulgate neceſſary orders for the plantation, to inflict corporal puniſhments, impriſonment, and fines, to determine all differences in a judicial way, and to convene the inhabitants in general-court, if it ſhould be thought meet. But it was granted only for one year, and might have been ſooner recalled, if a form of government ſhould be agreed on between thoſe noble perſonages, the inhabitants and the juriſdiction of Maſſachuſets. The validity of this ſignal but common

mon exertion of power has been rather palliated than defended by a principle, which was then generally admitted; that the oath of fidelity to the commonwealth was binding, even though the perſon ſhould no longer reſide within its limits.[2] Nothing can be more juſt than this maxim of univerſal policy, if we except the aukwardneſs of its preſent application. A rule, which all nations have adopted, becauſe it proceeds from the natural inſtincts of men, the common law of England has enforced: Declaring, that no alteration of time or place ſhall change the obedience of the ſubject, which he owed for that protection which the ſtate had given him from his birth and before it: The oath of allegiance adds only the ſacred tie of religion to the obligation of prior duty. That the Independents ſhould have aſſumed this reaſoning is not ſurpriſing, becauſe it naturally occurs to men in every ſituation: But how to reconcile the ſolemn promiſe of fidelity of a freeman to the no leſs ſolemn declaration of allegiance to the Engliſh crown, which was required by the charter, is more than the wiſeſt doctors of the churches of New-England could tell.

The annals of coloniſation, ancient or modern, can ſcarcely ſhew the commencement of a ſettlement ſo extremely faulty as that of Connecticut. The territory, of which they thus took poſſeſſion, was not only already occupied by the Dutch, but had been granted ſixteen years before to the Plymouth company. The whole coaſt of New-England was, not long after, divided into twelve different parts; and, in the preſence of James I. allotted to ſo many diſtinct members of that body. And, in April, 1635, that portion of it was aſſuredly granted to James, marquis of Hamilton, as his ſhare, which ſtretches from the river Connecticut, eaſtward, to the Narraghanſet-Bay; and, from its ſource, one hundred miles into the continent. That part of it which extends from Connecticut to Hudſon's-River was probably conveyed to the earl of Stirling, as his proportion: And ſince the patent was now ſurrendered, as we have ſeen, into the royal hands, the powers of government, which had been formerly given in truſt to that famous corporation, again reverted to the crown.[3] The emigrants before-mentioned can be conſidered in no other light, therefore, than as mere intruders on the rights of others.

thers. The juriſdiction ſuppoſed to be inveſted in Engliſh nobles was undoubtedly groundleſs: And it is unneceſſary to mention thoſe governmental acts of Maſſachuſets which proceeded from acknowledged uſurpation.

The coloniſts of Connecticut ſeem to have ſoon derided that commiſſion as invalid, or diſregarded it as inadequate to their occaſions: And they entered into a voluntary aſſociation, like thoſe which have been mentioned, for the eſtabliſhment of a body-politic, in order to make equal laws for the benefit of all. They were followed, in the ſubſequent year, by freſh emigrations, which were attracted by novelty, and they extended their plantations wide over the country, as their numbers thus increaſed. But they had not as yet any other title to the lands that they occupied than what poſſeſſion conferred in oppoſition to legal rights and the title of others, nor any other authority in government than what was derived from mere voluntary conſent. Like the Grecian colonies, they were ready to repay with gratitude what they owed to Maſſachuſets for former connexion; but they ſeem to have been unwilling to yield ſubjection. Yet the general-court, too tenacious to relinquiſh former pretenſions, continued its claim of ſuperiority: And, upon a petition of ſome of the inhabitants to be received again into its protection, that body formally aſſerted its right of juriſdiction, and gave a commiſſion to Pynchon to hold courts and to diſtribute juſtice; but with the reſervation of an appeal to the court of aſſiſtants.[4] When Connecticut refuſed obedience to the rules of action preſcribed, and denied the transfer of cauſes to the judicatories of Boſton, it acquired independence; becauſe both are of the eſſence of ſubordination.

If its numbers were not increaſed, its frontiers were conſiderably ſtrengthened by the exertions of thoſe puritanic nobles who have been mentioned, and who wiſhed to enjoy greater liberty, with former privileges, in New-England. Fenwick, who conducted their affairs, built a fort near the confluence of the river Connecticut, and called it Say-Brook; and of this he retained poſſeſſion, on their behalf, till the ardour of emigration cooled. The nobility naturally propoſed the creation of a new form of government, altogether ariſtocratic, with an hereditary ma-

giſtracy: But the people objected to an eſtabliſhment under which they would have enjoyed no will, and conſequently no freedom. And their immediate change of habitation was thereby checked. The civil wars, which ſoon enſued, becauſe their order, with a criminal neglect, no longer balanced the Engliſh conſtitution, attracted their attention to other objects of ambition or revenge. And, in December, 1644, the lords Brooke, Say and Seal, and others, ſold their right to the lands in that vicinity to Connecticut.' Thus a title, though extremely doubtful and defective, was acquired to the ſoil: But none of the powers of government were transferred; becauſe theſe noblemen, however forward were they to erect new ſyſtems and to acquire colonial privileges, did not themſelves poſſeſs any real authority. The conduct of all parties demonſtrates into what incongruities men neceſſarily fall, when miſled by zeal they depart from the ſober principles and conduct of their fathers.

Among the various emigrations from England, a ſmall colony, conducted by Eaton and Davenport, arrived at Boſton, in June, 1637. But though every perſuaſion was uſed to induce them to remain within that juriſdiction; yet, actuated by peculiar motives of ambition or intereſt, they removed thence to the neighbourhood of the Dutch, at Manhattans: And, notwithſtanding their oppoſition and threats, began the little plantation of Newhaven. Conformably to the wonted practice of the Independents in thoſe days, they eſtabliſhed for themſelves, by voluntary aſſociation, a government in church and ſtate, extremely ſimilar to that of Maſſachuſets. Thus, without attention to the rights of others, they occupied the ſoil; without regard to the laws of England they erected a ſyſtem, ſuitable indeed to their own views, but altogether inconſiſtent with their dependence on the ſovereign ſtate. The principles which they carried with them into the wilderneſs, and propagated, have continued to produce their neceſſary effects to the preſent times. One remarkable circumſtance in the juriſprudence of Newhaven alone ſhews their ſelf-ſufficiency: They abrogated the admirable trial by jury, both in civil and in criminal caſes, for which Engliſhmen have always contended with an ardour in proportion to its importance. As coloniſts arrived they extended their ſettlements as well on the continent as to Long-iſland. They long

formed

formed a barrier againſt the Dutch, who viewed their beginning and their progreſs with great jealouſy. And however inconſiderable, either as to numbers or power, they for eight and twenty years enjoyed all the delights of independent inſignificance.[6]

Nevertheleſs, neither of theſe colonies enjoyed their poſſeſſions in tranquillity. Their conduct by no means gave ſatisfaction to the neighbouring Pequots, the moſt powerful tribe in New-England, who had the ſagacity to ſee their own deſtruction in the progreſs of the ſtrangers. Agreeably to their ancient cuſtoms, which ſeem to be now adopted by the moſt poliſhed nations, they commenced hoſtilities as early as the year 1636, by the ſlaughter of ſeveral coloniſts, without previous notice of war. Both parties courted the friendſhip of the Narraghanſets with the greateſt aſſiduity. The Pequots begged them to forget their former enmity in their oppoſition to the new-comers, whoſe conduct ſhewed their intention to diſpoſſeſs both of their country; that they ought to remember, that the only good which either could expect from their friendſhip, would be at laſt to be devoured; whereas, were both to unite their common force, one magnanimous effort would, with eaſe and without danger, oblige them to abandon a land which they ſeemed ſo eager to engroſs. The reaſonings of the Pequots were juſt; and the event has ſhewn that their apprehenſions were well founded: Both tribes have been ſucceſſively annihilated. The Narraghanſets, bewitched by that ſpirit of diſcord which ſeems natural to the American Indians, entered into a league, offenſive and defenſive, with Maſſachuſets. Common and immediate danger united for once the colonies of New-England in common meaſures. During the ſummer of 1637, the war was carried on with the greateſt energy; and with that ſucceſs, which vigour, when conducted by common ſenſe, will always procure. The Pequots defended themſelves with the ſpirit of a people contending for their country, for their exiſtence. But ſuperior arms, and knowledge, and perhaps bravery, prevailed. And this tribe was extirpated. The priſoners were either tranſported to the Weſt-Indies, and there ſold for ſlaves, or reduced to a more painful ſervitude in New-England, becauſe they daily beheld thoſe regions where they had once enjoyed freedom and happineſs.

The allies, diſagreeing with regard to the property of the female captives, butchered ſeveral of them with a barbarity which would have diſgraced a better cauſe. And the coloniſts took poſſeſſion of the country which they had thus won.[7]

It was impoſſible for ſuch confederates to remain long in amity. The Narraghanſets, diſſatisfied with the diviſion of the plunder, began to expreſs their diſlike of the coloniſts, and to concert meaſures to put it out of their power to preſcribe for them in future. Connecticut and Newhaven had but too much reaſon to expect that the neighbouring Dutch would diſturb their repoſe. All theſe circumſtances convinced the plantations of New-England of the utility and importance of a mutual junction for common advantage. The confederacy, which was accordingly propoſed in the year 1638, was not finally concluded till May, 1643. The "united colonies," acted now as one joint body, and enjoyed moſt of the advantages of concord and coalition. Few circumſtances gave them more real unhappineſs, in theſe days, than the vicinity of the Dutch. That people, as we are aſſured, kept a trading houſe at Hartford after that place was under the juriſdiction of Connecticut. Diſagreement and jealouſy naturally aroſe, either with regard to commerce or juriſdiction; both parties watched opportunities of benefiting themſelves, and of annoying their rivals: And it was either the weakneſs or moderation of the Hollanders which prevented actual hoſtilities. But that people, by a formal treaty entered into with the commiſſioners of the confederacy, relinquiſhed their claims to every part of the river Connecticut. Yet it was the deciſive vigour of Cromwell which at length procured ſecurity for Newhaven, on the ſide of Manhattans. From that period, till the Reſtoration, theſe ſettlements, following the example and adopting the cuſtoms of Maſſachuſets almoſt in every thing, exerciſed like her the various powers of independent ſtates.[8]

Though Connecticut did not receive the tidings of that event which placed Charles II. on his throne with the hilarity of the ſouthern colonies; yet a prudent regard to her own intereſt induced her to ſend Winthrop to England, to promote her intereſts. During thoſe days of rejoicing, before diſtruſt was awaked, he eaſily ſucceeded in all his views.

And,

And, to his ſolicitations, that monarch granted a charter of incorporation, in April, 1662.

Similar to that of Rhode-Iſland almoſt in every reſpect, it was conferred on ſimilar motives. That the affairs of the colony "might be duly "ordered and managed;" a body politic was created and inveſted with the privileges therein mentioned, by the name of "the governor and "company of the Engliſh colony of Connecticut, in New-England:" And it was empowered to exerciſe the ſame rights and powers "as any "other corporation within the realm." For the better management of the affairs of the company, a governor, deputy-governor, and twelve aſſiſtants were appointed. A general aſſembly was eſtabliſhed to be holden twice a year; which was to conſiſt of the officers before-mentioned, and of two deputies from every town; which was to adviſe about the affairs of the company; which was to elect freemen; to appoint annually the governors and aſſiſtants, and other officers; to erect courts of juſtice; which was to make neceſſary laws for the colony, "that ſhould not however "be contrary to thoſe of the realm of England;" and to impoſe fines, impriſonments, and other puniſhments, "according to the courſe of other cor-"porations within the kingdom." And thus were created all the various powers of government, as well legiſlative as executive. That part of his dominions in New-England, bounded on the Eaſt by Narraghanſet-bay, on the North by the ſouthern line of Maſſachuſets, on the South by the ſea, and extending in longitude from Eaſt to Weſt, with the line of Maſſachuſets before-mentioned to the South-Sea, was granted to the governor and company and their ſucceſſors: To be holden of the manor of Eaſt-Greenwich, in common ſoccage; paying one-fifth of the ore of gold and ſilver to the king, in lieu of all ſervices. Thus were given away equally the poſſeſſions of Newhaven, of the Dutch at Manhattans, of the Spaniards on the margin of the Pacific-ocean, excluſive of private claims: But all laws declare, that no transfer of another's right ſhall ever have any effect, becauſe it is in its nature void. The governor and company were empowered to tranſport thither ſuch perſons as ſhould willingly accompany them; with all neceſſaries and merchandiſes; but "not diſcharged from the payment of the cuſtoms, which are or ought

"to

"to be paid for the ſame." The word *are* referring to the tonnage and poundage that had been already impoſed; the term *aught* to ſuch duties as might be granted in future by the ſame authority: And thus was reſerved the power of parliament to impoſe ſimilar taxes. The coloniſts and their poſterity were declared to be entitled to the ſame immunities as natural-born ſubjects within any dominions of the crown; but the governor was required to adminiſter to them the oath of ſupremacy and obedience: Thus adding the ſanctions of religion to that duty which had been previouſly implanted in the heart, and recognizing the authority of the king, civil and eccleſiaſtical, and with it the laws. All lands, havens, fiſhings, mines, and other franchiſes, were granted to the governor and company; but with a reſervation of the right of free fiſhery on the coaſts and rivers of Connecticut to every ſubject. They were empowered to array the inhabitants, and to conduct them to war againſt any invaders; and, upon juſt cauſe, to attack and deſtroy the natives or other enemies; but upon this condition, that they ſhould not offer any unlawful violence to the ſubjects of ſtates in amity with England. By the grant to Rhode-Iſland, engagements were appointed, becauſe the coloniſts ſcrupled to ſwear at all; but, by this, a variety of oaths were impoſed: By the former, liberty of conſcience was granted in the fulleſt extent; the preſent is ſilent with regard to religion.[9]

Such then is the ſubſtance of the charter of Connecticut, which is obnoxious to the ſame objections as the original ſettlement itſelf; becauſe the perſons whoſe rights were then given away were not informed of the ſolicitation. The crown-lawyers were equally regardleſs of the intereſts of the nation, by adopting a policy for colonial government, which future ſtateſmen regretted in vain. Thus was eſtabliſhed, in Rhode-Iſland and Connecticut, a mere democracy, or rule of the people. Every power, as well deliberative as active, was inveſted in the freemen of the corporation or their delegates; and the ſupreme executive magiſtrate of the empire, by an inattention which does little honour to the ſtateſmen of thoſe days, was wholly excluded. Yet the legality of what was ſo extremely impolitic may be juſtly queſtioned. Though a king of England may relinquiſh his ſtation, yet by his own grant he cannot aſſuredly di-

veſt

veſt himſelf or his ſucceſſors of the eſſential qualities of his high office: He muſt neceſſarily continue to be the ſupreme adminiſtrator of the laws in every part of the dominions of the ſtate, or ceaſe to be at all. For it is a ſoleciſm in policy to ſuppoſe rules of action preſcribed by the ſovereign legiſlature, without any efficient power to oblige all to obey them. Nevertheleſs this monſtrous incongruity may be found in various colonial charters. When, ſubſequent to the Reſtoration, the parliament, as we have ſeen, extended its ſuperintendence and regulation to the plantations, Charles II. found it impoſſible to carry into execution the parliamentary acts in Maſſachuſets and Maryland, in Rhode-Iſland and Connecticut. Subſequent ſtatutes were paſſed, in order to enforce former rules; but with no deciſive effect; though that of William[10] required the royal approbation, as eſſential to the appointment of a colonial governor. Neither were theſe colonies under any obligation to communicate the acts of their local legiſlature for the aſſent of the king. When Northey, the attorney-general, perceived at length, in 1714, what had been ſo long deplored, he adviſed, "that it will be neceſſary to have an "act of parliament to oblige them to tranſmit their laws for royal ap-"probation." But the acceſſion of a new monarch and of new miniſters produced a change of ſyſtem: And the lords commiſſioners of colonies repreſented to the commons, in the year 1733, in language which muſt afford reflexions to men of diſcernment: "That Rhode-Iſland "and Connecticut, being charter-governments, hold little or no cor-"reſpondence with our office, and we are very little informed of what is "doing in theſe governments; they not being under any obligation, by "their reſpective conſtitutions, to return authentic copies of their laws "to the crown for diſallowance, or to give any account of their pro-"ceedings." During the reigns of Charles II. and his ſucceſſor, plans of reformation were not only begun, but in ſome meaſure matured. From the Revolution, to the preſent times, Engliſh ſtateſmen, more than any other on earth, have ſubſtituted temporary expedient for uniformity of ſyſtem, becauſe their attention was perpetually dragged to objects nearer and more intereſting. The preſent race feel the conſequences, and lament what it is perhaps now too late to repair.

While

While the attainment of this patent, ſo favourable to its intereſts and views, gave the greateſt joy to Connecticut, it afforded little ſatisfaction to Newhaven, which had been included in it without its aſſent. Her pride was offended, and ſhe ſaw her independence in danger. A general meeting, which was convened in November, 1662, ſoon determined, that it was not lawful to join, and therefore unanimouſly reſolved to adhere to its former combination; inſiſting, with the wonted inaccuracy of ſuch reſolutions, not that the charter, with regard to the poſſeſſions and people of Newhaven was void, but that they were not included within its boundaries. But when, in the year 1664, ſhe heard of the arrival of the royal commiſſioners, to inquire into the ſtate of New-England, ſhe prudently changed her former reſolution, and became for ever the county of an artful neighbour.[11]

Originally ſettled by the ſame kind of people, a ſimilar policy naturally rooted in all the colonies of New-England. Their forms of government, their laws, their courts of juſtice, their manners, and their religious tenets, which gave birth to all theſe, were nearly the ſame.[12] The affectionate reception, which Connecticut gave to the regicides, even after their attainder by parliament, who here enjoyed a long life of miſerable ſecurity and died in peace, ſufficiently demonſtrates her principles and attachments. She received the royal commiſſioners with a ſtudied indifference, but with a fixed reſolution to deride their authority, and to diſobey their commands.[13] Yet they ſeem to have decided a controverſy of conſiderable importance in her favour. On this occaſion, various pretenders claimed the country of the Narraghanſets, ſtretching along the weſtern ſhore of the bay of that name. Edward Randolph appeared on behalf of the duke of Hamilton, and prayed to be put into poſſeſſion of what had been granted to his anceſtor in 1635: Connecticut ſaying, that ſhe had nothing to object againſt his claim, but thoſe writings were burnt which would demonſtrate her former purchaſe of what the king had ſo lately confirmed. The whole conduct of the commiſſioners evinces that their talents were unequal to the importance of the truſt repoſed in them. They decided, with a ſpirit which ſhews their want of knowledge of Engliſh law, that the property of the ſoil belonged

longed to various owners, but that the right of government was inveſted in Connecticut.[14]

During the remainder of the reign of Charles II. that colony in a great meaſure acted rather as an independent ſtate, than as the inconſiderable territory of a great nation. The general orders of that prince were contemned, becauſe the royal interpoſition was deemed inconſiſtent with the charter. The acts of navigation were deſpiſed and diſobeyed, becauſe they were conſidered equally inconſiſtent with the freedom of trade as with the ſecurity of ancient privileges: And the courts of juſtice refuſed to allow appeals to England, becauſe the powers of ultimate juriſdiction were claimed from the patent. That monarch beheld this conduct with regret, becauſe he plainly perceived all its bad tendency: But he was too much engaged with other affairs, more intereſting and important, and probably waited the iſſue of his conteſt with Maſſachuſets, which involved the fate of the whole, before he attempted to reduce it to a more immediate dependence on his crown.

Connecticut, with the other colonies, congratulated James II. on his acceſſion to the throne, acknowledged his authority, and begged for protection of their chartered privileges. He received the compliment with ſatisfaction, though he had already decided what courſe he ſhould purſue with regard to colonial policy. Various articles of high miſdemeanour were exhibited, in July, 1685, againſt the governor and company, before the lords commiſſioners of colonies;[15] impeaching them of making laws contrary to thoſe of England; of extorting unreaſonable fines; of enforcing an oath of fidelity in oppoſition to that of allegiance; of intolerance in religion; of denial of juſtice. Theſe various accuſations, which were ſuppoſed to infer a forfeiture of the charter, were inſtantly ſent to Sawyer, attorney-general, with orders to iſſue a writ of quo-warranto forthwith againſt the colony. He obeyed. And Randolph, who had acted as a public accuſer, now offered his ſervices to carry it beyond the Atlantic.[16] The governor and company had for ſome time ſeen the ſtorm approaching which threatened to lay their beloved ſyſtem in the duſt: And they endeavoured, with great addreſs, to elude the force of what they were unable to reſiſt. When they remembered the fatal acci-

dent which had formerly bereaved them of their ancient conveyance, they now carefully concealed their charter in a venerable elm; which to this day is deemed ſacred, as the preſerver of their conſtitution. They wrote to the ſecretary of ſtate, in January, 1687; profeſſing their loyalty; deſiring to continue in the ſame ſtation; but, were it the royal purpoſe to diſpoſe otherwiſe of them, ſubmitting to the royal commands."[17] Randolph about the ſame time propoſed it to the lords of the committee of colonies, as a thing abſolutely neceſſary, "that the charter of Connecticut ſhould "be proſecuted with effect:" Giving as a reaſon, what ſhews the extent of his views, "that they will employ none to defend it, but let the law "take its courſe; that with the late government of Boſton they may be "paſſive, and not be ſaid to give away the people's right."[17] Though the advice was politic, nothing more ſeems to have been done than to order Andros to accept the ſubmiſſion of the colony, and to annex it to Maſſachuſets in conformity to its requeſt. After receiving a variety of addreſſes[18] from the governor and company, dictated by deſpair and hope alternately, as they were actuated by inclinations of reſiſtance or deſires of ſubmiſſion, Andros went to Hartford, in October, 1687. He publiſhed, in the general-court, his orders and commiſſion; which every one tacitly obeyed: He diſſolved the former government; he aſſumed the adminiſtration: And Treat, the late governor, and Alleyn, the ſecretary, he received into his legiſlative council "for the better carrying on the "ſervice of Connecticut."[19]

When "the amazing tidings of the revolution at Boſton" reached Connecticut, the inhabitants determined no longer to obey a governor, who, from commanding one half the colonies, was now confined in a jail. The chartered government was ſoon reſumed;[20] becauſe the ſafety of the people was deemed the ſupreme law. And this they have enjoyed, notwithſtanding the ſubmiſſion before-mentioned, with the approbation of eminent lawyers, though not without ſubſequent attacks, to the preſent days. Engliſh ſtateſmen regretted, in after-times, that Randolph's advice was not literally purſued.

AUTHORITIES

AUTHORITIES AND NOTES.

[1] Dougl. Sum. 2 v. p. 159; Neal's N. Eng. 1 v. p. 164,5; and Hutch. Hiſt. Maſſ. 1 v. 44. — [2] Ib. 98-100.

[3] In order to eſtabliſh the title of the firſt ſettlers of Connecticut to the ſoil, colonial hiſtorians have recited royal grants with the ſame confidence as if they had actually peruſed them. "The Lord Say and "Brooke's title to that territory, ſays Neal, came by a grant to Robert, "Earl of Warwick, to whom King Charles, about the year 1630, made "a grant of that part of New-England, which extends from the river "Narraghanſet forty leagues along the coaſt towards Virginia, and from "the Weſtern ocean to the South-Sea; which the Earl of Warwick "made over to Lord Say, Brooke, and others, as appears by a copy of "the patent, bearing date 1631." — Hiſt. 1 v. p. 165-6. — "Having "obtained a grant, 1630, from the council of Plymouth, the Earl "of Warwick, ſays Douglas, procured a patent from King Charles I. "which he afterwards made over to Lord Say." — Sum. 2 v. p. 163. — Nevertheleſs, the lords commiſſioners of colonies, "having carefully "examined the books and papers in the office," in order to report to the king the title of the Ducheſs of Hamilton, during the reign of William, "could not find that Charles I. confirmed the titles of any of the mem-"bers of the Plymouth company except that of Gorges." — New-Eng. A. 222. — And their remark is probably extremely juſt. Soon after the famous grant of New-England, of 1620, the council of Plymouth, diſcouraged by difficulties which it could not ſurmount, divided the whole coaſt into ſhares, and caſt lots for them in the preſence of James I. The map, publiſhed by Purchas in the year 1625, diſplays what part of it fell to each, and proves that the proportion of the Earl of Warwick lay ſomewhat to the Northward of the bay of Maſſachuſets. — Pilgrims, 4 v. 1872. — "The Earl of Warwick, we are aſſured, had a patent for "Maſſachuſets-bay about the ſame time, [1623,] but the bounds are "not known." — Hutch. Hiſt. Maſſ. 1 v. p. 7. — Here then are the lands which were granted to that nobleman, if any charter ever paſſed the

great ſeal or that of the council of Plymouth. It was not, however, till April, 1635, that ſeveral deeds were granted by that body, to the individual members, for thoſe ſhares which had formerly fallen to each: And now, to James, Marquis of Hamilton, was conveyed, as his portion, almoſt the ſame territory that was ſaid to have been transferred to the Earl of Warwick in the year 1630, five years before; becauſe it extended from the Narraghanſet-bay to the river Connecticut. — There is a collated copy of his feofment in the record, New-Eng. A. p. 201. — From coloniſation the attention of the Marquis of Hamilton was ſoon attracted to what more nearly affected him. He drew his ſword in defence of his king and the ancient conſtitution of his country. And, while he ſacrificed his life to both, the people of Connecticut took poſſeſſion of his colonial eſtate: Croſſing from the weſtern bank of their river, after the deſtruction of the Pequods, and overſpreading his lands on its eaſtern ſhore. At the Reſtoration, when it was reaſonably to be expected that the claims of the children of loyaliſts would be favourably attended to, that nobleman's daughter applied to Charles II. for relief: Stating what ought to have been deciſive at leaſt with him; "that the "true reaſon of her ſupplication was, becauſe, her father had died fight-"ing for his." Though an agent was ſoon after ſent to New-England to ſolicit redreſs of the royal commiſſioners, yet the ſingular talents and zeal, which have lately been exerted in ſupport of the rights of that illuſtrious family, were not then employed. Neither the king's miniſters nor commiſſioners comprehended the moſt ſimple of claims, becauſe they introduced extrinſic circumſtances. The earl of Arran once more applied to William: But, though his rank commanded attention, he had acted with too much honour and too little policy at the Revolution to expect a very favourable deciſion. The lords commiſſioners of colonies ſtated his title after conſiderable reſearch; which, if judged by Engliſh law, was perfectly irrefragable; but referred him for remedy to a colonial court of juſtice, compoſed of judges and jurors, who were in actual poſſeſſion of the conteſted property. The governor and company gave in a formal anſwer to thoſe claims, which ſtates the patents recited by the hiſtorians before-mentioned, with a confuſion and inaccuracy which evince

evince that no written evidence remained of them. That nobleman replied; " that, when they produced a grant from the Plymouth-compa-" ny to the Earl of Warwick, it ſhould have an anſwer." They were ſilent. — See Record, New-Eng. A. p. 170-201. — As this conveyance then either never exiſted, or could not be ſhewn, the charter of Connecticut was void, with regard to what had been formerly conferred by James I. on the council of Plymouth, and by it regularly tranſmitted to the marquis, with the approbation of Charles I. Of one half of that colony therefore the preſent Duke of Hamilton enjoys what Engliſh lawyers call " the mere right:" When, and in what manner, he will be able to clothe that with poſſeſſion, the wiſeſt probably will be unable to inform him. Effluxion of time, and a momentous alteration of circumſtances, have rendered theſe notices ſomewhat unintereſting: But it muſt always be of importance and of uſe to detect error by the eſtabliſhment of truth, to confront the laxity of miſrepreſentation with the accuracy of records.

[4] Hutch. Hiſt. 1 v. p. 100. — [5] Ib. 94-100-1. — [6] Ib. 82-5; Neal, 1 v. 169. — [7] Hutch. Hiſt. p. 76-80. — [8] Ib. 60-124-5. — [9] See the charter in the Record, Proprieties, A. p. 320. — [10] 7-8 Will. III. ch. 22. — [11] Hutch. Hiſt. 1 vol. p. 83. — [12] Dougl. Sum. 2 vol. p. 174-6. — [13] Hutch. 1 v. p. 218-49. — [14] New-Eng. Papers, 3 v. p. 303.

[15] *Articles of high-miſdemeanour, exhibited againſt the governor and company of Connecticut, to the lords-commiſſioners for plantations, the 15th of July*, 1685. — From N. Eng. Ent. 2 v. p. 241.

1. They have made laws contrary to the laws of England.

Proofs out of the law-book of that colony, printed at Cambridge, in New-England, 1673.

1. Pag. 1. It is ordered that no man's life ſhall be taken away, unleſs it is by virtue or equity of ſome expreſs law of this colony, and ſufficiently publiſhed; or in caſe of the defects of a law in any particu-

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lar caſe, by ſome clear and plain rule of the word of God, in which the whole court ſhall concur.

Pag. 30. Title, Houſes and lands. It is ordered, that no inhabitant of this colony ſhall have power to make ſale of his accommodations of houſes or lands to any but the inhabitants of the town, wherein the ſaid houſe and land are ſituated, without the conſent of the town; or, unleſs he hath firſt propounded the ſale thereof to the town where ſituated, and they refuſe to give ſo much as any other chapman will.

Pag. 37. Title, Judges and jurors. It is ordered, that the judges of the courts ſhall have liberty, if they do find, in their judgement, the juries not to have attended the evidence given in, and true iſſue of the caſe in their verdict, to cauſe them to return to a ſecond conſideration of the caſe; and, if they ſhall ſtill perſiſt in their former opinions, to the diſſatisfaction of the court, to nominate another jury, and commit the conſideration of the caſe to them. And it is alſo left in the power of the bench to vary and alter the damages given in by any jury, as they ſhall think moſt equal and righteous; provided that what alteration ſhall be made in that kind be done in open court, before the plaintiff

plaintiff and defendant be releaſed from their attendance.

Pag. 46. Title, Marriage. For the proſecution of unlawful marriages, it is ordered, that no perſon, within that juriſdiction, ſhall join any perſons together in marriage but the magiſtrates.

2. They impoſe fines upon the inhabitants and convert them to their own uſe.

2. Pag. 3. Title, Alarm. Five pounds fine to be paid to the public treaſurer.

3. They enforce an oath of fidelity upon the inhabitants without adminiſtering the oath of ſupremacy and allegiance, as in their charter is directed.

3. Pag. 53. Oath of fidelity.

4. They deny to the inhabitants the exerciſe of the religion of the church of England; arbitrarily fining thoſe who refuſe to come to their congregational aſſemblies.

4. Pag. 22. It is ordered, that, where the miniſtry of the word is eſtabliſhed, according to the order of the goſpel throughout this colony, every perſon ſhall duly reſort and attend thereunto reſpectively upon the Lord's-day, and upon ſuch public faſt-days, days of thankſgiving, as are to be generally kept by the appointment of the authority: And, if any perſon within this juriſdiction, without neceſſary cauſe, withdraw himſelf from the public miniſtry of the word, he ſhall forfeit for his abſence from every ſuch meeting five ſhillings.

5. His majeſty's ſubjects, inhabiting there, cannot obtain juſtice in

5. Pag. 41. It is ordered, that whoſoever ſhall defame any court of

the courts of that colony.

of juſtice, or the ſentences or proceedings of the ſame, or any of the magiſtrates or judges of any ſuch courts, in reſpect of any act or ſentence therein paſſed; and, being thereof lawfully convicted in any court of aſſiſtants, or general-court, he ſhall be puniſhed for the ſame, by fine, impriſonment, disfranchiſement, or baniſhment, as the quality or nature of the offence ſhall deſerve.

6. They diſcourage and exclude the government all gentlemen of known loyalty, and keep it in the hands of the independent party in the colony.

All which is humbly ſubmitted by

EDWARD RANDOLPH.

REMARK. Had that man's talents been equal to his zeal, he might have diſcovered other articles, in the policy and laws of Connecticut, which would have more ſtrongly implied a forfeiture of the charter than thoſe he ſelected: "No appeals are allowed to the king in council." — Dougl. Summ. 2 v. p. 174. — A denial of appeal is an aſſertion of independence; becauſe, without it, the ſubordination cannot be preſerved. The colony ſtruggled hard, during the reign of William, to eſtabliſh that eſſential point: But it was decided by that monarch: "That it "was equally the inherent right of the ſubject to proſecute appeals, as "of the ſovereign to receive them from the colonies, without any reſer-"vation of charters." — Record, Proprieties, B. p. 353-5, 403. — This is a fundamental principle of the Engliſh conſtitution: Yet Engliſh ſtateſmen have not been uniform in their application of it in practice. For, if an appeal is an inherent right of the ſubject, two deductions of law

law are inevitable: A king of England cannot take it away, or reſtrain it; becauſe he can exert no legiſlative act over the people: A ſubordinate legiſlature, a colonial aſſembly, cannot regulate or aboliſh the right; becauſe it can make no laws affecting the principles of the ſubordination, or of its connexion with the ſovereign ſtate; it cannot diveſt the privileges of ſubjects who are not repreſented. Secondly, the general-court aſſumed the power of puniſhing, with death, idolators, blaſphemers, conſpirators againſt the colony, rebellious or diſobedient children. — Laws, p. 9. — The charter only authoriſed the corporation to inflict ſuch puniſhments as are impoſed by other corporations within the realm. Now, the law of England permits no ſubordinate body-politic to take away life, as a puniſhment, unleſs empowered by ſpecial words for that end. Thirdly, the general-court impoſed a great variety of taxes; it obliged the owners of all veſſels, not owned in the colony, to pay, at clearing, powder-money to the naval officer. — Laws, 31; Dougl. Summ. 2 v. 178. — The charter gave no ſuch power; and, to have conferred it, expreſs words were neceſſary. But it was in this manner probably inferred: That every freeman might diſpoſe of his own property; that, the whole being formed into one body-politic, the general aſſembly muſt poſſeſs the power of the people; and the aſſembly, conſequently, as legiſlature of the colony, might rightfully impoſe duties for the general advantage. This reaſoning ſeems juſt when applied to the inhabitants; but muſt fail when extended to fellow-ſubjects who were not repreſented. Yet how contradictory is this to the argumentation of modern independents! who inſiſt, with an incongruity degrading to common-ſenſe, "that the legiſlative power of the ſtate cannot im-"poſe taxes for the uſes of the ſtate;" that the whole does not poſſeſs all the powers of one.

[16] New-England Ent. 2 v. 246-51.

[17] The following letter, from the governor and general-court, to the ſecretary of ſtate, ſhews not only the art of that body, but the ſlight ground on which that paper was conſtrued to contain a ſurrender of their charter. — From New-Engl. Ent. 2 v. p. 344.

Right Hon. Hartford, 26 Jan. 1686-7.

The occaſion of theſe lines are to inform your lordſhip, that we have formerly ſent ſeveral addreſſes to be preſented to his majeſty; but have no return, that they ever came to his majeſty's view. The laſt year two writs of quo-warranto were ſerved upon us by Mr. Randolph, which were iſſued out of the Crown-office of the court of King's Bench at Weſtminſter, but ſerved upon us after the time of appearance had elapſed, as we underſtand it: But then we prepared an addreſs to his majeſty, and appointed Mr. William Whiting, a merchant in London, to be our attorney, to preſent our addreſs to his majeſty: And, in caſe we ſhould be called upon to anſwer before his majeſty, or any court or judges, by what authority we hold, poſſeſs, and enjoy, divers rights, privileges, and franchiſes, that he might on our behalf make anſwer thereto. And ſince that, December laſt paſt, another quo-warranto was ſerved upon us, requiring our appearance before eight days of the Purification of the bleſſed virgin Mary; which is ſo ſudden, by reaſon of our remoteneſs, and the ſharpneſs of the winter-ſeaſon, that we cannot make ſuch ſuitable return as we ought: Yet we have again requeſted and empowered Mr. Whiting to appear on our behalf, if we muſt come to anſwer, ſo that, by reaſon of our non-appearance or ſilence, we may not be proceeded againſt to an outlawry, or forfeiture of our liberties and privileges.

May it pleaſe your honour, we are his majeſty's loyal ſubjects, and we are heartily deſirous that we may continue in the ſame ſtation that we are in, if it may conſiſt with his princely wiſdom to continue us ſo: But, if his majeſty's royal purpoſes be otherwiſe to diſpoſe of us, we ſhall, as in duty bound, ſubmit to his royal commands; and, if it be to conjoin us with the other colonies and provinces, under Sir Edmund Andros, his majeſty's preſent governor, it will be more pleaſing than to be joined with any other province.

Sir: We pray your honour's pardon for this addreſs, which is only occaſioned for fear any miſhap ſhould befal our former letters, requeſting your honour to acquaint his majeſty, that we are his obedient and loyal

ſubjects,

ſubjects, and ſhall ſo approve ourſelves, notwithſtanding any miſrepreſentation that may be made of us; who are, &c.

ROBERT TREAT, Governor.

By order of the general-court,

JOHN ALLYN, Secretary.

The following anſwers of the general-court to the inquiries of the lords of the committee of colonies are ſubjoined; becauſe they diſcloſe a variety of curious particulars of the ſtate of Connecticut at the end of four-and-forty years; they ſhew the manner in which they tell their own ſtory. — From New-Eng. papers, 3 v. p. 117. — The queries are implied in the anſwers, which are ſomewhat abridged.

1. We have two yearly general-courts, as they are ſtated in his majeſty's moſt gracious charter. — We have two courts of aſſiſtants, which conſiſt of the governor and aſſiſtants, which are for the trial of capital offenders, and for the hearing of all appeals with a jury. — Our colony is divided into four counties; and in each there are two county-courts annually, of magiſtrates and jury, to hear and determine all actions of debt, and the caſe, and criminal matters of a leſs nature. — As there is any ſpecial occaſion the governor calls his aſſiſtants, who are of his council, and meet and conſider of ſuch matters, as fall in the interval of the general courts, and determine the ſame.

2. The legiſlative power is only in the general-court; the executive is in thoſe courts appointed, as before.

3. We have little traffic abroad; and ſo, little occaſion for a court of admiralty, diſtinct from the court of aſſiſtants.

4. We have ſent one of our law-books: Wherein are what laws were of force when we printed them, ſince which ſome few have been made which are not yet printed, and ſo have not ſent them. Your lordſhips may pleaſe to take notice, that, in our preface to our laws, we ſay we have been careful not to make any repugnant to the ſtatute-laws of England, ſo far as we underſtand them: Profeſſing ourſelves always willing to receive light for emendation; what we then ſaid is our preſent purpoſe, and ſhall be our conſtant practice.

5. As to the number of our forces: We have, for the preſent, only one troop, which conſiſts of about ſixty horſe, but we are upon raiſing three more. Our forces are train-bands: In each county there is a major, who commands its militia, under the general.

In Hartford county there are	835.	In Newhaven,	623.
New-London, ——	509.	Fairfield,	540.
		The whole militia,	2507.

6. We have one ſmall fort at the mouth of Connecticut river. Good towns we have; one eſpecially, called New-London, formerly Pequot: Near which the Engliſh obtained a memorable victory over the Pequots; the firſt and moſt ſignal blow the Indians received. It greatly needs fortifications, but we want eſtates to raiſe them, and to purchaſe artillery: And we ſhould thankfully acknowledge the favour of any good benefactors that would contribute to ſo good a work.

7. It is rare that any privateers or pirates come on theſe dangerous coaſts; only, two years ago, a French one wintered at New-London, and went away in the ſpring.

8. As for our Indian neighbours; we compute them to be about 500 fighting men: We are ſtrangers to the French, and know nothing of their ſtrength or commerce. Our chief trade for procuring clothing is by ſending what proviſions we raiſe to Boſton, where we buy goods. The trade with our Indians is worth nothing, becauſe their frequent wars hinder their getting peltry.

9. We have neighbourly correſpondence with New-Plymouth, with Maſſachuſets, ſince Major Andros came to New-York with him, but not like what we had with his predeceſſor: With Rhode-Iſland we have not ſuch good correſpondence as we deſire.

10. Our boundaries are as expreſſed in the charter: We cannot gueſs the number of acres ſettled or manurable; the country being mountainous, full of rocks, ſwamps, hills, and vales; what is fit is taken up; what remains muſt be gained out of the fire, by hard blows, and for ſmall recompence.

11. } Our principal towns are Hartford, New-London, Newhaven,
13. } and Fairfield: Our buildings are generally of wood; ſome are of

of ſtone and brick; and ſome of them are of good ſtrength, and comely, for a wilderneſs. We have twenty-ſix ſmall towns already ſeated; and in one of them there are two churches. — Our rivers are numerous and navigable.

14. } The commodities of the country are, proviſions, lumber, and
15. } horſes; but we cannot gueſs the yearly value: The moſt are tranſported to Boſton, and bartered for clothing; ſome ſmall quantity is ſent to the Caribbee iſlands, and there bartered for products and ſome money: And now and then (rarely) veſſels are laden and ſent to Madeira and Fyal, and the cargoes bartered for wine. We have no need of Virginia trade; as moſt people plant ſo much tobacco as they need. We have good materials for ſhip-building. The value of our annual imports probably amounts to 9000l. We raiſe no ſalt-petre.

16. } We have about twenty petty merchants; ſome trade to Boſton;
20. } ſome to the Indies, and other colonies: But few foreign merchants trade here. The number of our planters is included in our train-bands; which conſiſt of all from 16 to 60 years of age. There are but few ſervants, and fewer ſlaves; not above 30 in the colony. There are ſo few Engliſh, Scotch, or Iriſh, come in, that we can give no account of them: There come ſometimes three or four blacks from Barbadoes, which are ſold for 22l. each. We do not know the exact number of perſons born; nor of marriages; nor of burials: But the increaſe is as follows: The numbers of men, in the year 1671, were 2050; in 1676, were 2303; in 1677, were 2362; in 1678, were 2490; in 1679, were 2507.

21. } We cannot gueſs the eſtates of the merchants; but the property
25. } of the whole corporation doth not amount to 110,788l. ſterling. Few veſſels trade here but from Boſton and New-York, which carry off our produce. Twenty-four ſmall veſſels belong to the colony. The obſtruction of trade is owing to want of eſtates, and to the high price of labour. Commerce would be improved, were New-London, Fairfield, and Newhaven, made free ports for 15 or 20 years; this would increaſe the trade and wealth of this poor colony. There are no duties on goods,

exported,

exported or imported, except on wines and liquors; which, though inconſiderable, are appropriated to maintain free-ſchools.

26. } The people are ſtrict congregationaliſts; a few more, large con-
27. } gregationaliſts; and ſome, moderate Preſbyterians: But the congregationaliſts are the greateſt number. There are about four or five ſeven-day men, and about as many Quakers. Great care is taken of the inſtruction of the people in the Chriſtian religion, by miniſters catechizing and preaching twice every ſabbath, and ſometimes on lecture-days; and alſo by maſters of families inſtructing their children and ſervants, which the law commands them to do. We have 26 towns, and there are 21 churches in them; and in every one there is a ſettled miniſter, except in two newly planted. The ſtipend, which is more or leſs according to duty, is from 50l. to 100l. Every town maintains its own poor: But there is ſeldom any want, becauſe labour is dear; being from 2s. to 2s. 6d. a day for a labourer; becauſe proviſions are cheap; wheat is 4s. a buſhel Wincheſter, peaſe 3s. Indian corn 2s. 6d. pork 3d. a pound, beef 2d. ½ a pound, butter 6d. and ſo other matters in proportion: Beggars and vagabonds are not ſuffered, but, when diſcovered, they are bound out to ſervice; vagabonds, who paſs up and down, are puniſhed by law.

15 July, 1680.

WM. LEATE, Governor.
JN°. ALLYN, Secretary.

[17] His letter in New-Eng. Ent. 2 v. p. 342.

[18] The addreſs is among the New-Eng. papers, vol. 3.

[19] His letter to the committee of colonies, in the New-Eng. Ent. 2 v. p. 372.

[20] Hutch. Hiſt. Maſſ. 1 v. p. 383-406.

CHAP.

CHAP. XIII.

The parliament meets. — Their proceedings. — Diſcontents in Virginia. — Birkenhead's conſpiracy. — The aſſembly endeavours to remove the cauſe of them. — Its laws. — Maryland refuſes to concur. — The parliament prohibits planting tobacco in England. — Other laws. — Foreigners reſort to the ſouthern colonies. — Acts of naturalization. — The parliament convened. — They impoſe taxes on the colonies. — Remarks.

MEAN-WHILE the parliament, which was convened in July, 1663, taking into their conſideration the encouragement of commerce, naturally turned their attention to colonial affairs. And, in order "to maintain a greater correſpondence and kindneſs between the "colonies and England; to keep them in a firmer dependence on it; to "make this kingdom a ſtaple, not only of the productions of the plan-"tations, but of the merchandiſes of other countries for ſupplying "them;" it was enacted: That no commodity of the growth or manufacture of Europe ſhall be imported into the ſettlements in Aſia, Africa, or America, but ſuch as ſhall be ſhipped in England, and proceed directly onboard Engliſh ſhips, navigated by Engliſhmen; under the penalty of forfeiture of goods and veſſel; the one half to the governor of the colony, the other to the informer, to be recovered either in the judicatories of England or the colonies.[1] But, in order to encourage them, and counterbalance theſe reſtrictions, there were excepted out of the general rule, ſalt for the fiſheries of New-England and Newfoundland, wine from Madeira and the Azores, and ſervants, horſes, and victual, from Scotland and Ireland: Duties were impoſed on dried or ſalted fiſh, if caught or imported in other veſſels than thoſe of ſubjects;[2] ſea-coal was allowed to be exported to the plantations upon paying twenty-pence a chaldron. And the parliament, having remarked that the making of tobacco increaſed in England, notwithſtanding the penalties of former laws, "to "the loſs of his majeſty's cuſtoms, and the diſcouragement of the colo-"nies," then enforced former regulations for prevention of the growth of that commodity in the European dominions of the crown.[3]

Thus

Thus the ſupreme legiſlature regulated and ſtrengthened the commercial intereſts of the ſtate and its dependencies: Thus was finally eſtabliſhed the famous monopoly of the colonial trade; which, the parliament then aſſerted, was conformable to the common uſage of nations. Its commencement, we have ſeen, was coeval with the diſcovery of America. And we have remarked the rulers of England at all times endeavouring to enforce ſimilar regulations in vain. But, though it has been celebrated as a policy equally liberal and wiſe, yet experience ſeems to have demonſtrated the fallacy of the principles on which it was originally founded, and hath ſince been ſupported. All monopolies are neceſſarily prejudicial to the commercial ſyſtem, which has at every period of its annals flouriſhed while protected by freedom, and decayed when repreſſed by reſtraint. The colonial trade has been always extremely advantageous to the nation: Yet men of diſcernment have thought, that the monopoly of it, however beneficial to the intereſts of individuals, has proved detrimental to the proſperity of the whole. The national commerce ought undoubtedly to be protected and encouraged; but no particular branch of it will good policy favour and ſupport: And when, in ſuperaddition to the eſtabliſhment of that famous ſyſtem, bounties and drawbacks were given as ſpecial encouragements, a diſeaſe, equally unnatural and deſtructive, was really introduced into the body politic. The general habit of trade and manufactures was proportionally diſcouraged and debilitated. And, when future accidents produced thoſe obſtructions that might have been foreſeen, diſorders broke out, which expedients might palliate, but time only could effectually cure.[4] The trade of the colonies came at length to be conſidered as the only one poſſeſſed by the empire, or worthy of its care. Had a ſyſtem, thus pernicious and favoured, continued without interruption, the ſtate might in a little period of years have become enſlaved by its own dependencies. What was dreaded, as one of the greateſt evils, has been productive of a benefit pleaſing and advantageous. The ſudden defalcation of the colonial commerce has evinced, what no argumentation could have proved, though wiſe men foreſaw it, that England, even when engaged in an expenſive war, would be a great, a wealthy,

a wealthy, and commercial, nation, were her tranſatlantic provinces to ſink into non-exiſtence.

Nevertheleſs, it was far more eaſy to enact thoſe various laws than to enforce their punctual execution. Even the beſt affected colonies, Barbadoes, Virginia, Maryland, conſidering them either as inconſiſtent with their privileges, or deſtructive of their infant commerce, heſitated to obey, or eluded their proviſions.[30] And they trafficked, without reſtraint, wherever hope of gain directed their navigators. Informed of a conduct ſo contrary to the acts of navigation and to the intereſts of the nation, Charles II. wrote letters to the colonial governors: He reprimanded them for their neglects, or rather contempts, of former orders; and, that they might no more pretend ignorance, he informed them; that, as he reſolved to put thoſe laws ſtrictly in execution, he would conſider their negligence as the higheſt miſdemeanour: Giving a reaſon worthy of the monarch of a commercial nation, "that it ſo much concerneth the trade of this "kingdom."[5] His ſucceſſors formed theſe ſentiments into ſtanding inſtructions, but without effect.

The good-humour and felicity, which prevailed ſo much in Virginia upon the Reſtoration, appear not to have been of long continuance; becauſe a variety of cauſes concurred to diſturb its repoſe. A ſevere law had been made by the grand aſſembly, in the year 1663, againſt the importation of Quakers, under the penalty of five thouſand pounds of tobacco on the importer of them, "unleſs by virtue of an act of parlia-"ment of the fourteenth of our ſovereign lord the king."[6] Tobacco, which was then the chief, the only, ſtaple of the colony, partly owing to the great quantities raiſed in America and in England, but more to the excluſion of the trade of foreigners and to the Dutch war, was reduced to a price extremely inconſiderable, when compared with that of former times. All ſupplies of European commodities, without which the Virginians could not exiſt, were now reſtrained to England; and the price was enhanced, as we are aſſured, to what the merchant pleaſed to put on them. And the frontiers had been for ſome time infeſted by the incurſions of the Suſquehannahs, a powerful tribe which inhabited the banks of Potowmack. Great diſcontents, owing to all theſe cauſes,

prevailed in Virginia; and being fomented by ſome of Cromwell's ſoldiers, who remained there, they at length ended in Birkinhead's conſpiracy to ſeize the government:[7] But, being timely diſcovered, the prudence of the governor eaſily diſappointed it, without bloodſhed. And this trivial plot was thought of importance enough to induce the aſſembly to make a law "for keeping holy the thirteenth of September," being the day on which it was diſconcerted.[8]

The aſſembly endeavoured, with a laudable ſolicitude, to remove the cauſe of diſcontents, that too often, when neglected, ſwell into diſaffection. It enacted: "That no claim whatſoever ſhall be pleadable a-"gainſt any inhabitant, but for goods imported; that, in payment of "debts, country creditors ſhall have priority, and all courts of juſtice "ſhall give precedence, in judgement, to contracts made within the "colony."[9] Theſe ſingular regulations, ariſing probably from motives of reſentment or retaliation, can be defended only by a neceſſity which new circumſtances produced. To enhance, if poſſible, the price of a commodity on which the exiſtence of the colony depended, the aſſembly prohibited the growth of tobacco for a limited time: But, Maryland refuſing to concur in a ſimilar policy, that meaſure, however well intended, was not productive of the good effects expected from it. The ſame diſtreſſes renewed the ſame meaſures; which now acquired the name of "acts of ceſſation." And the ſame inconvenience being at length probably felt in Maryland, a law was paſſed,[10] in April, 1666, to enforce a ſimilar project. But the proprietary, conſidering that this regulation might greatly injure the poorer ſort of planters, and affect the royal cuſtoms, diſſented from a law, the policy of which was ſo extremely doubtful. The acts of ceſſation proved unſucceſsful.

But, at the ſame time that the production of that famous luxury was thought unprofitable in the colonies, it was deemed extremely advantageous in England; where it was ſtill planted, notwithſtanding the ſeverity of former prohibitions. The parliament, in the year 1670, required the conſtables and other public officers, from time to time, "to "pluck up and utterly deſtroy" all tobacco planted or growing in any field in England."[11] And this law, "which, we are told, was the moſt

"effectually

" effectually executed of any in the ſtatute-book," " aſſuredly proved deciſive. Thus we diſcover the policy of acts of the ſupreme legiſlature in the hiſtory of the plantations: Thus the advantage and inclination of the people of England were plainly ſacrificed at the ſhrine of colonial intereſt: And the ancient coloniſts juſtly deemed theſe laws, what they really were, greater favours conferred, than their poſterity have of late been diſpoſed to conſider them.

" Many complaints having been made, of veſſels belonging to the A-" merican colonies, which, contrary to the intent of former laws, had " tranſported their commodities to Europe;" the parliament enacted: " " That the governors of the reſpective plantations ſhall annually make " return of a liſt of ſuch veſſels as have laded any of the productions of " the plantations; and, if they ſhall be found to have unladed any enu-" merated goods in any part of Europe other than in England, they " ſhall be forfeited, with their furniture and lading: That the penalty " ſhall be proſecuted in any court of admiralty in England." Nothing can evince more clearly the difficulty of executing the acts of navigation, ariſing from the oppoſition of miſtaken principles, or the evaſions of intereſt; the great jealouſy of the legiſlature and the nation of breaches of the commercial ſyſtem, which has been long the favourite of England.

Though the general-court of Maſſachuſets had, as early as the year 1662, readily granted, to a few French proteſtant refugees, " liberty to " inhabit there;" [14] yet the firſt act which occurs, of any colonial aſſembly, for the naturalization of aliens, was paſſed in Maryland, in May, 1666: [15] And from the many ſimilar laws, which were enacted in every ſubſequent ſeſſion till the Revolution,[16] it appears that great numbers of foreigners tranſported themſelves thither during that period. They at no time emigrated to New-England; becauſe none were welcome in that country who were not Independents in religion. The firſt act of this kind was made in Virginia, in September, 1671; and from that time many others appear, till June, 1680; when a general law, for naturalization of aliens, on certain conditions, was eſtabliſhed. " With a view " to the more ſpeedy peopling of the colony, ſays the aſſembly, and to " give

" give all poſſible encouragement to perſons of different nations to tranſ-
" port themſelves, their families, and ſtock, to ſettle there;" the governor was empowered, by an inſtrument under the great-ſeal, to declare any alien, upon taking the oath of allegiance, to be completely naturalized: But with this condition, " that nothing ſhall be conſtrued to
" give power to foreigners to execute any matter, which, by acts made
" in England concerning his majeſty's plantations, they are diſabled to
" do." [17] This clauſe is remarkable, as well for cautiouſly giving the rule that conſtruction, which it muſt have received from the common-law excluſive of it, as for evincing how well that ſubordinate legiſlature underſtood the Engliſh juriſprudence, and how attentive it was in adhering to it. An act of naturalization of one colony cannot aſſuredly operate in any other; becauſe all are independent and co-ordinate with regard to each other: And the laws of an inferior dominion can no more govern beyond its boundary than the edicts of France can extend to Germany, or the by-laws of a corporation can reach without its walls. It gave to aliens indeed many valuable privileges within the colony where naturalized; ſuch as to acquire lands and to vote at elections; but they were not thereby enabled to act as merchants or factors, or to own veſſels; becauſe that would have been directly contrary to the letter of the acts of navigation: And this argumentation is ſupported by facts. The veſſels of aliens, who were naturalized by colonial legiſlatures, have been ſeized and condemned by the courts of admiralty, becauſe trading contrary to law, though the act of aſſembly was pleaded. And theſe judgements were properly affirmed upon appeals, from the ſubordinate judicatories, to the king in council: Giving as a reaſon; " that the acts of a pro-
" vincial legiſlative power, comprehenſive as they may be in their terms,
" cannot operate againſt the general juriſprudence of the empire." [18] Yet this ſignal deciſion, on a propoſition of colonial law extremely intereſting, did not prove abſolutely deciſive. Several governors even of royal appointment, with an ignorance or inattention unworthy of their ſtation, granted letters of denization to aliens, under the authority of which they trafficked contrary to law: And the American courts of juſtice, with a ſtill groſſer ſpirit, ſupported their pretenſions in oppoſition to the acts

acts of navigation. But their judgements were properly reverſed, by the king in council, during the reign of William; becauſe a governor could not diſpenſe with an act of parliament; becauſe his proceeding alone muſt be of leſs authority than an act of aſſembly, which could confer no ſuch power, and to which he was neceſſarily ſubordinate. And orders were then tranſmitted that no more denizations ſhould be granted.

The parliament mean-while was convened in February, 1672. And the cauſe of their meeting ſufficiently appears from the ſpeech which Charles II. made then on that occaſion: [19] "Though I am glad to ſee "you here, I have not called you together till there was an abſolute neceſ- "ſity. Since you were here laſt, I have been forced into a moſt neceſ- "ſary and expenſive war; and I doubt not you will give me effectual "aſſiſtance to go through-with it." The commons ſoon turned their views beyond the Atlantic. The commerce of the colonies had been before regulated and reſtrained; they were now conſidered by them as proper objects of taxation. They obſerved: That it had been permitted by ſeveral former laws to tranſport the enumerated productions of the plantations, in America, Aſia, and Africa, from the places of their growth, to other Engliſh colonies in thoſe parts, without paying cuſtom for the ſame, either at the lading or unlading; whereby the trade in thoſe commodities was greatly increaſed; that the inhabitants of thoſe ſettlements, not content with being ſupplied themſelves with thoſe merchandiſes for their own uſe, free from all duties, while the ſubjects in England had paid great impoſitions for what they uſed, had ſent great quantities to divers parts of Europe, and daily vend the ſame to the ſhipping of other nations, to the diminution of the cuſtoms and of the navigation of the kingdom. They enacted therefore: That if any veſſel, which by law may trade in the plantations, ſhall take on-board any enumerated commodities, and a bond, with ſufficient ſecurity, ſhall not have been given to unlade them in England, there ſhall be rendered to his majeſty, for ſugars, tobacco, ginger, cocoa-nut, indigo, logwood, fuſtic, cotton wool, the ſeveral duties mentioned in the law; to be paid in ſuch places in the plantations, and to ſuch officers, as ſhall be appointed to collect the ſame: And, for the better collection of thoſe taxes, it was enacted: That the whole

whole buſineſs ſhall be managed, and the impoſts ſhall be levied, by officers who ſhall be appointed by the commiſſioners of the cuſtoms in England, under the authority of the lords of the treaſury.[20]

The policy of the legiſlature is extremely clear; no duties were to be demanded for the commodities exported to England, becauſe, under the the authority of former laws, cuſtoms were already collected: The exportation of thoſe merchandiſes to foreign nations had been already prohibited by the acts of navigation, though they were ſtill allowed to be carried from one plantation of the crown to any other; and now the ſame duties were impoſed, on ſuch tranſportation, as were then paid upon the conſumption within the realm. This law was made the corner-ſtone of a ſyſtem which was afterwards erected; it was extended to other productions of the colonies as they became objects of commerce;[21] it was explained and enforced:[22] And the money ariſing from it was ordered to be paid into the exchequer for the diſpoſal of parliament.[23] The duties of tonnage and poundage had been impoſed, we have ſeen, and extended to every dominion of the crown at the Reſtoration. But this is the firſt act which impoſed cuſtoms on the colonies alone, to be regularly collected by colonial revenue-officers. During the ſeaſon of high paſſion, the cleareſt propoſitions of fact and of law are made objects of doubt or of diſputation; and hiſtory is often compelled to enter the liſts of controverſy. Whether the duties, which were then impoſed, ought to be deemed regulations of trade, or exertions of taxation, for the uſes of revenue, has been formally debated in modern times. Yet the nature of the queſtion neceſſarily leads to an altercation of words, as frivolous as degrading. We may rely therefore on the weighty authority of Sir Edward Coke, who aſſures us:[24] "That every burden whatſoever, ſet upon any man, "is a tallage, which cannot be impoſed without common aſſent, by act "of parliament." And the commons, the great aſſeſſors of the ſtate, have invigorated the ſentiment of that moſt eminent lawyer by continual approbation. They acted agreeably to his reaſoning, it ſhould ſeem, when they rejected, in 1733, the petition of the colony of Rhode-Iſland,[25] againſt the act impoſing duties on the products of the foreign Weſt-Indies, when imported into the Engliſh plantations;[26] Giving as a reaſon, what

ſhews

ſhews the ſenſe of the houſe and the nation; "that it was a money-"bill."

But the coloniſts of former times were aſſuredly as deſirous to admit the legality of the tax, and to deny the policy of the regulation, to pay the one, yet to evade the other, as their poſterity have been zealous to diſpute the former and allow the latter. The agents of Maſſachuſets repreſented to the committee of colonies, in 1678; "that, for the en-"couragement of their trade, they humbly propoſed it as a thing that "would be joyfully accepted, that, when they export their fiſh and "ſtaves to foreign countries, they may have liberty to bring back ſuch "goods as New-England wants for its own ſupplies, without coming "firſt to England: they being moſt willing to pay all his majeſty's du-"ties upon their arrival in New-England."[27] When the coloniſts were accuſed, in thoſe days, of breaches of the acts of trade, they inſiſted: That, after they had paid the tax, they might, by law, carry their commodities whither they pleaſed. Yet, the lords of the committee ſubmitting this pretenſion, in the year 1675, to the attorney-general, Jones, he gave it as his opinion, "that the tax muſt be paid, and ſecurity alſo "given, to carry their productions to a dominion of the crown; be-"cauſe the law impoſing the cuſtom did not repeal that requiring the "bond."[28] The pertinacity of mankind is unbounded when ſtrengthened by intereſt or encouraged by faction. Former practices nevertheleſs continued, becauſe they were in ſome meaſure juſtified by former pretences. And the doubts before-mentioned were at length decided, in conformity to the opinion of that eminent lawyer, by a ſtatute of William and Mary.

During the ſeſſion of 1672, the colonies were not only deemed objects of taxation, but of regulation: And the parliament, obſerving the national importance of the whale-fiſhing, for its farther encouragement, permitted all perſons reſiding in England, whether natives or aliens, to import, from Greenland, Newfoundland, or the colonies, whatſoever was made of any creature living in the ſea, caught in ſhips properly belonging to England, and in them brought in, without paying any cuſtom: But for the oil or fins, imported in veſſels belonging to the plantations,

tions, ſeveral ſmall duties were impoſed; and, on the importation of ſuch commodities in foreign veſſels, taxes were laid, amounting almoſt to a prohibition.[29] The policy of this regulation is extremely obvious: The fiſhing, in general, being of national importance, was to be encouraged; the people of England were preferred to the inhabitants of the colonies; but theſe were allowed greater advantages than foreigners. And this is the only law, which appears in the ſtatute-book, that makes any diſtinction between the veſſels of the colonies and thoſe of England, by giving a preference to the latter over the former.

Such then was the power exerciſed by the parliament, during thoſe days, over the plantations: But, from that period, the attention of the members was drawn to other objects more near and intereſting; and we ſhall find the legiſlature taking little farther notice of colonial affairs during the reign of Charles II.

The commiſſioners of the cuſtoms proceeded immediately to execute the truſt ſo lately repoſed in them by parliament. They appointed officers for Virginia, whoſe duty was twofold; to collect the various duties aſſeſſed by the ſtatute juſt mentioned; to ſuperintend the punctual execution of the acts of navigation.[31] And theſe men were received in that loyal dominion with the attention due to perſons inveſted with legal powers from royal authority. As early as the ſeſſion of September, 1672, an act was paſſed,[32] obliging "maſters of ſhips to pay the country dues "to the collectors." Thus the aſſembly recogniſed their power, and enlarged it, by extending their commiſſion to taxes that were not within their authority, by contradiſtinguiſhing *country dues*, impoſed by itſelf, from the *cuſtoms* eſtabliſhed by parliament. The example of Virginia was followed by Maryland. Charles Calvert, the governor, was the firſt collector appointed for it; and this office he exerciſed, with approbation, till he became proprietary, in 1676. And the aſſembly ſeems to have firſt recogniſed that officer during the ſeſſion of April, 1682; by regulating "the fees which ſhould be paid at the entries of veſſels belonging "to the province."[33] Nevertheleſs, a collector, it ſhould ſeem, was not appointed for New-England tillthe year 1679: And, when Edward Randolph for the firſt time attempted to execute that office at Boſton, he

he was oppoſed with the ſteady zeal of men who deemed their chartered privileges invaded: And we ſhall find this conduct one of the chief cauſes of the diſſolution of the ancient government of Maſſachuſets. Thus were collectors firſt introduced into colonial juriſprudence: And ſuch was their reception in the different provinces, according to their diſſimilar principles.

AUTHORITIES AND NOTES.

[1] 15 Cha. II. ch. 7.

[2] The importation of ſuch fiſh by aliens was ſoon altogether prohibited, by 18 Cha. II. ch. 21. ſ. 2. and at a ſubſequent period it was effectually enforced, by 1 Geo. I. ſtat. 2. ch. 18. ſ. 2.

[3] 13, 14, Cha. II. ch. 11. ſ. 6.

[4] See Dr. Smith's Wealth of Nations, on this ſubject.

[5] Record in Plantat. Off. titled New-England, v. 2. p. 11-15.

[6] Laws of Virg. p. 61, 2. — The act of parliament here alluded to is the ſtat. 13, 14, Cha. II. ch. 1. "for preventing the dangers that may a-"riſe by certain perſons called Quakers, and others refuſing to take "the lawful oaths; which enacted, "that it ſhall be lawful for his "majeſty to cauſe them to be tranſported to the plantations beyond the "ſeas." Hence, tranſportation to the colonies, as a puniſhment, has been ſaid to have commenced immediately after the Reſtoration.

[7] Brit. Emp. in Am. 1 vol. p. 246; Preſent State, p. 59, 60.

[8] Laws, p. 63. — [9] Ib. 64-7. — [10] Bacon's Laws, 1666, ch. 21.

[11] 22, 23 Cha. II. ch. 26. — [12] Obſerv. on the Stat. 336.

[13] 22, 3, Cha. II. ch. 22. ſ. 12, 13. — [14] Hutch. Hiſt. 1 v. p. 224.

[15] Bac. Laws, 1666, ch. 7. — [16] Ib. paſſ. — [17] Laws of Virg. p. 132. — It muſt be obſerved, however, that this, among other acts, was framed in England, tranſmitted to Virginia, and paſſed by the aſſembly. — See Journal in Plant. Off. v. 3. p. 209.

[18] The veſſel of Brunet, a Frenchman, was ſeized at St. Chriſtopher's, in the year 1682, and there condemned by the court of Admiralty; becauſe it was the property of an alien trading contrary to the laws of na-

vigation; though he pleaded the act mentioned in the text. He appealed to the king in council. And two queſtions were propoſed to Lord Chief-Juſtice North: 1°. If an alien naturalized in Virginia may trade in any other colony: 2°. If this condemnation was legal. His lordſhip reported: That the ſeizure and adjudication were according to law; and that a naturalization in Virginia, or in any other plantation, is only local, not extending to any other colony. And this opinion was approved, and the judgement affirmed. — Journ. Plant. Off. 4 v. p. 27-32-4. — See this ſubject admirably diſcuſſed, in the caſe of Craw and Ramſay, in Vaughan's Reports. How gradual is the advance of the juriſprudence of a great empire to maturity; and how curious is it to trace the progreſs! Seymour, governor of Maryland, tranſmitting to the lords-commiſſioners of colonies, in 1704, ſeveral acts of naturalization, informed them, "that theſe are only intended to enable them [naturalized aliens] to "purchaſe lands; but not to qualify them to trade, or to be owners or "maſters of ſhips: It being always acknowledged, that any act of na-"turalization, made in this province, extends no farther than its limits, "and is circumſcribed by the 7 and 8 Wm. III." — Maryland Papers, G. N°. 25. — And the laws of that colony juſtified his obſervation. The acts paſſed by the aſſembly, during the reign of that prince, contained a declaration ſimilar to that mentioned in the text: That they ſhould not be conſtrued to enable the alien to do what was prohibited by the ſtatutes of England. — Bacon's Acts, 1692, ch. 71. 1694, ch. 4. 1695, ch. 35. — The aſſembly ſhewed, that it underſtood the law, and was willing to conform to it. And the principle upon which it then acted applied equally to every caſe whatſoever: That a provincial legiſlature can eſtabliſh no regulation in oppoſition to the rules of action preſcribed by the ſupreme power in the ſtate.

[19] Com. Journ. 9 v. p. 246. — [20] 25 Cha. II. ch. 7. ſ. 2, 3. — [21] 4 An. ch. 5. ſ. 12; 8 Geo. I. ch. 18. ſ. 22. — [22] 7-8 Will. III. ch. 22. — [23] 1 Geo. I. ſtat. 2. ch. 12. ſ. 4.

[24] 2 Inſtitute, 533. The authors of the Farmer's Letters, addreſſed to the Pennſylvanians, compiled chiefly by Livingſton and others, but adopted by Dickenſon, oppoſed the act of parliament, compelling New-York

York to furniſh the king's troops with neceſſaries, upon the principle of Sir Edward Coke, mentioned in the text. They argued: That an act of parliament, commanding us to do a certain thing, if it has any validity, is a tax upon us for the expence that accrues in complying with it. — Let. p. 8. — But conſiſtence of argumentation is not to be expected from zealots in any cauſe. They conſider a duty impoſed, either as a cuſtom or as a regulation, as beſt ſuits the preſent purpoſe, without regarding conſequences, good or evil.

[25] Hiſt. Reg. 18 v. p. 211-17. — [26] See a remarkable parliamentary debate on this petition, Gent. Mag. 3 v. p. 509-11. — [27] See the repreſentation of the agents of Maſſachuſets poſt.

[28] Upon the complaints of the merchants, trading to New-England, of breaches of the acts of navigation, the lords of the committee of plantations wrote to the attorney-general, that it was doubted, whether thoſe, paying the duty required by law, might not carry the productions of the colonies to foreign countries, and deſired his opinion. — Record, Plant. Off. titled New-England, 2 v. p. 88.

The anſwer of Sir William Jones. — Ib. 106.

" Upon conſideration of the ſtatute of the 25th of the king, and alſo of the 12th of the king, I find: —

1°. That, by the act of the 12th, it is expreſſly provided, that none of the goods, therein enumerated, (being of the growth or production of any of the Engliſh plantations, in America, Aſia, or Africa,) ſhall be carried to any other places, than to ſome other Engliſh plantation, or to England or Ireland, under pain of forfeiting ſhip and goods. For prevention of carrying them to other places, ſhips, going out of England or Ireland, were to enter into bond to bring ſuch goods only into England or Ireland, the bonds to be given to the officers of the cuſtom-houſe here, before the ſhips begin their voyage: Ships coming from other places, who were permitted to trade, were to give bond to the governor of the plantation, where ſuch goods were laden, that the goods ſhould be carried to England or Ireland, or ſome other Engliſh plantation.

By a later ſtatute Ireland is excluded, 22-3 Charles II. ch. 2. — The act of the 25th doth enact: That where bond ſhall not be firſt given to bring the goods to England, and to no other place, there a duty ſhall be paid, as by that act.

Now, from both theſe ſtatutes, I am of opinion, that bonds are ſtill to be taken. — If the ſhip be of England, &c. then to bring the goods into England only, and in that caſe no duty is to be paid at the plantation: But, if the ſhip comes from any other place than England, then the duty muſt be paid, and alſo a bond given to the governor, &c. as before, to carry the goods to ſome Engliſh plantation, or to England. For the ſtatute of the 25th doth not in any ſort repeal the act of the 12th, but only impoſes a duty, where the bond was not confined to a bringing to England.

W. Jones."

Remark. The reaſonings of the above opinion were confirmed by the ſtatute, 7 & 8 William III. ch. 22.

[29] 25 Charles II. chap. 7. ſ. 1.

[30] Barbadoes complained to the committee of plantations, in the year 1676, of the acts of trade as grievances; inaſmuch as "a free trade is "neceſſary for ſettling new colonies:" But this was deemed a dangerous notion in regard to England. — Journal in Plant. Off. 1 v. p. 234. — A relaxation of thoſe laws being urged by the agents of that iſland, the propoſal was debated at the committee on a ſubſequent day; but rejected: Giving for a reaſon, "that they ought to be ſupported, as being "the ſettled laws of the land." — Ib. 242. — And ſee Sir William Berkeley's letter poſt.

[31] The collector's commiſſion empowered him: 1°. "To collect the duties, growing due to his majeſty by virtue of the act of 25 Charles II. 2°. To enter houſes, and execute all other lawful authorities for the better managing the ſaid duties: 3°. To obſerve that the acts of navigation be duly executed and obeyed." — New-York papers, D. N°. 33.

[32] Virg. papers, 3 v. p. 12; Laws, p. 101. In April, 1679, the aſſembly paſſed an act; "aſcertaining collector's fees for entering and "clearing ſhips." — Ib. 126. — The commiſſioners of the cuſtoms reported

ported to the lords of the treaſury, in February, 1698-9: " That the " duties, impoſed by the aſſemblies, are wholly different from thoſe " which the collector is charged with, and are not under our direction." — Record, Proprieties, A. p. 344-8. — Thus the aſſemblies and the commiſſioners of the cuſtoms diſtinguiſh equally between taxes eſtabliſhed by provincial legiſlatures, which the royal collectors were not empowered to demand, and thoſe impoſed by parliament, which were put under the management of the board of cuſtoms: Both revenues then commenced, and continued without oppoſition to the preſent times.

[33] Bacon's laws, 1681, ch. 4.

Thoſe, who are curious to read a minute account of the condition of Virginia in the ſixty-fourth year of its exiſtence, will be gratified with the peruſal of the following anſwers of the famous Sir William Berkeley to the inquiries of the lords of the committee of colonies. — From Virg. pap. 75 B. p. 4.

1. } There are a governor and ſixteen counſellors, who have from his
3. } ſacred majeſty a commiſſion of oyer and terminer, and who judge all cauſes that are above 15l. ſterling. For what is under that value there are particular courts in every county, which are twenty in number. Every year at leaſt the aſſembly is called; before whom lie appeals: And this aſſembly is compoſed of two burgeſſes out of every county. Theſe lay the neceſſary taxes, as the neceſſity of the war with the Indians, or other exigences, require. — In twenty-eight years there has not been one prize brought into this country; ſo that there is no need of a particular court of admiralty. — The legiſlative and executive powers are ſeated in the governor, council, and aſſembly, and officers ſubſtituted by them.

4. The ſecretary of this country ſends every year to the lord-chancellor, or one of the principal ſecretaries of ſtate, what laws are yearly made; which, for the moſt part, concern only our private exigence. For, contrary to the laws of England, we never did, nor dare, make any; only this, that no ſale of land is good and legal, unleſs, within three months after the conveyance, it be recorded in the general-court or county-courts.

5. All

5. All our freemen are bound to be trained every month in their particular county; which, we do ſuppoſe, and do not much miſtake in the calculation, are near 8000. Horſe we have none; becauſe they would be too chargeable for the poor people.

6. } There are five forts: But, God knows, we have neither ſkill
7. } nor ability to make or maintain them. For there is not, nor, as far as my inquiries can reach, ever was, one engineer in the country; ſo that we are at continual charge to repair inartificial buildings. There are not above thirty ſerviceable great guns; which we yearly ſupply with powder and ſhot, as our ability will permit. We have no privateers ſince the late Dutch war.

8. We have no European neighbours ſeated nearer to us than St. Chriſtopher's or Mexico, that we know of; except ſome few French that are beyond New-England. The Indian neighbours are abſolutely ſubjected; ſo that there is no fear of them. We have no correſpondence with any European ſtranger, nor is there a poſſibility to have it with our own nation, farther than our traffic concerns.

9. } When I came into the country, I found only one ruinated fort,
10. } with eight unſerviceable great guns diſmounted, and ſituated in a moſt unhealthy place, and where any enemy, if he knew the ſoundings, might keep out of the reach of the beſt guns in Europe. Before, or ſince, we never had one great or ſmall gun ſent us, ſince my coming hither, nor, I believe, in twenty years before: All that were ſent by his ſacred majeſty are ſtill in the country, with a few more that we bought. Beſides theſe guns, we never had any money of his majeſty towards the buying of ammunition or building of forts: But what can be ſpared out of the public revenue we yearly lay out in it.

11. As for the boundaries of our land: They were once great; ten degrees at leaſt: But now it hath pleaſed his majeſty to confine us to half a degree; knowingly I ſpeak this: Pray God it may be for his majeſty's ſervice; but I much fear the contrary.

12. } Commodities of the growth of this country, we never had any,
14. } till of late, but tobacco; which yet is conſiderable, and yields his majeſty a great revenue. But of late we have begun to make ſilk;

and

and ſo many mulberry-trees are planted, that, if we had ſkilful men from Naples or Sicily to teach us the art of making it, in leſs than half an age we ſhould make as much ſilk, in a year, as England did yearly expend threeſcore years ſince; but now we hear it is grown to a greater exceſs, and of more common and vulgar uſage. — Now, for ſhipping, we have admirable maſts, and very good oaks; but, for iron ore, I dare not ſay there is ſufficient to keep one iron-mill going for ſeven years. — Salt-petre we have none. — Rivers we have four; all able to harbour ſafely a thouſand ſhips of any burden.

15. } We ſuppoſe, and I am very ſure we do not much miſcount,
16. } that there is in Virginia above 40,000 perſons, men, women, and children: Of which there are 2000 black ſlaves; 6000 Chriſtian ſervants for a ſhort time; and the reſt have been born in the country, or have come in to ſettle or ſerve, in hope of bettering their condition in a growing country. Yearly we ſuppoſe there comes in of ſervants about 1500; of which moſt are Engliſh, few Scotch, and fewer Iriſh; and not above two or three ſhips of negroes in ſeven years.

17. All new plantations are, for an age or two, unhealthy, till they are thoroughly cleared of wood; but, unleſs we had a particular regiſter-office, for the denoting all that die, I cannot give a particular anſwer to this query; only this I can ſay, that there are not ten unſeaſoned hands (as we term them) that die now: Whereas, heretofore, not one of five eſcaped the firſt year.

18. Engliſh ſhips, near eighty, come out of England and Ireland every year for tobacco; ſome few New-England ketches; but of our own we never yet had more than two at a time, and thoſe not more than twenty tons burden.

19. } Mighty and deſtructive have been the obſtructions to our trade
20. } and navigation by that ſevere act of parliament which excludes us from having any commerce with any nation in Europe but our own; ſo that we cannot add to our plantation any commodity that grows out of it; as olive-trees, cotton, or vines: Beſides this, we cannot procure any ſkilful men for our now hopeful commodity of ſilk: And it is not lawful for us to carry a pipe-ſtave, or a buſhel of corn, to any place in

in Europe out of the king's dominions. If this were for his majeſty's ſervice, or the good of the ſubject, we ſhould not repine, whatever were our ſufferings: But, on my ſoul, it is the contrary for both; and this is the cauſe why no ſmall or great veſſels are built here. For we are moſt obedient to all laws, whilſt the New-England men break through them, and trade to any place that their intereſt leads them to. I know of no improvement that can be made in trade, unleſs we had liberty to tranſport our pipe-ſtaves, timber, and corn, to other places beſides the king's dominions.

REMARK. The law did not prohibit what made Sir William ſo unhappy.

21. } No goods, either imported or exported, pay any duties here,
22. } only the 2s. a hogſhead on tobacco exported, which is to defray all public charges: And this year we could not get an account of more than 15,000 hogſheads. But of this revenue the king allows me 1000l. yearly; with which I muſt maintain the port of my place, and a hundred extraordinary charges that cannot be put into any public account: And I can knowingly affirm, that there is no government of ten years ſtanding but is allowed thrice as much; but I am ſupported by my hopes that his majeſty will one day conſider me. — There is no revenue ariſing to his majeſty, but out of the quit-rents: And this he hath given away to a deſerving ſervant, Colonel Henry Norwood.

23. The ſame courſe is taken here, for inſtructing the people, as there is in England: Out of towns every man inſtructs his own children according to his ability. We have forty-eight pariſhes, and our miniſters are well paid, and by my conſent ſhould be better, if they would pray oftener and preach leſs: But, as of all other commodities, ſo of this, the worſt are ſent us, and we have few that we can boaſt of, ſince the perſecution in Cromwell's tyranny drove divers worthy men hither. Yet, I thank God, there are no free-ſchools, nor printing; and I hope we ſhall not have, theſe hundred years. For learning has brought diſobedience, and hereſy, and ſects, into the world, and printing has divulged them and libels againſt the beſt government: God keep us from both!

Virginia,
20 June, 1671.

WILLIAM BERKELEY.

CHAP.

CHAP. XIV.

The diſcontents of Virginia continue. — The aſſembly endeavours to remove the chief cauſe of them. — Sends deputies to England. — Their repreſentation. — A charter of privileges ordered. — Bacon's rebellion defeats it. — Suppreſſed. — Subſequent acts of the aſſembly. — Charles II. *ſends aid to the governor. — He appoints commiſſioners to inquire into grievances. — Sir William Berkeley recalled. — Lord Culpeper appointed governor. — Proceedings of his aſſembly. — A freſh inſurrection. — Suppreſſed. — The conſequences. — Domeſtic induſtry encouraged. — The Revolution.*

THOSE diſcontents of Virginia, which have already been remarked, not only continued, but ſeem to have ſwelled into diſaffection, partly by the ſuperaddition of freſh matter, but more by the inflammatory arts of the deſigning. The original emigrants now ſlept with their fathers, and they had been ſucceeded by a race of men, born within her foreſts, who were extremely uninformed, becauſe no ſeminaries of inſtruction then exiſted in the colony, and who were therefore liable to impoſition in proportion to their want of intelligence. Ignorant of their own rights, and ſunk into that ſlothful repoſe, which never fails to produce a want of ardour in nations, ſimilar to the liſtleſſneſs of the individual, with their attendant infelicities, the Virginians were miſerable, becauſe they were uninſtructed, and indolent, and poor. And, as they did not enjoy *the liberty of printing*, becauſe no preſs then exiſted in the province, they could not eaſe their pain by giving vent to their indignation. Owing to theſe and former cauſes, two inſurrections broke out in the beginning of the year 1675, which were eaſily ſuppreſſed by the prudent vigour of the governor, becauſe they had been raiſed without ſufficient grounds, and without any concert. The aſſembly, with a parental anxiety, ſtill endeavoured, though in vain, to remove diſorders that had hitherto baffled its utmoſt ſkill. It recollected, that Maryland had been early ſeparated from that ancient dominion on the North; that Carolina had been lately formed out of the ſouthern frontiers: It now

beheld *the northern neck*, containing one half of the whole, given away to ſtrangers, who had ſhared neither the danger nor expence of the original ſettlement. During the extreme diſtreſs of the royal party in the year 1649, when, as it was afterwards ſaid, Virginia was as little cultivated as Carolina in 1664, or Pennſylvania in 1680, that immenſe territory, lying between the rivers Rappahannock and Potowmack, had been granted to Lord Hopton, Berkeley, Jermyn, Culpeper, and other cavaliers; who, probably wiſhed to make Virginia that aſylum which their opponents had found in New-England. As the validity of the patent was probably queſtioned, it was ſurrendered in May, 1669, and Lord Culpeper, having purchaſed the ſhares of his noble aſſociates, then obtained that grant which occaſioned ſo much diſcontent; becauſe he endeavoured to take poſſeſſion of thoſe plantations within it which had been long poſſeſſed and cultivated: And, in February, 1673, he obtained, from the improvidence of his prince, a leaſe for one and thirty years of the quit-rents, eſcheats, and other caſualties, of the whole. The legiſlature feared, that the entire colony might be thus frittered away, leaving ſcarcely the beloved name of Virginia. In order to fruſtrate ſo dreadful a calamity, and to procure a redreſs of other grievances, it ſent Moryſon and two other agents to England in April, 1675. But, to defray the charges of a ſolicitation, on which ſo much depended, taxes unuſual and weighty were impoſed; which, as too often happens, fell heavieſt on the pooreſt of the inhabitants.' And we ſhall find that the means, which were thus employed to procure them relief, were uſed by the artful to inflame their diſcontents.

The agents ſeem to have executed the truſt repoſed in them with the greateſt ability and addreſs. To Charles and his miniſters they repreſented: That the public revenue, ariſing from the cuſtoms on the productions of that colony, then amounted to one hundred thouſand pounds a year; that the inhabitants, who now amounted, by the favour of the king, to fifty thouſand, were the laſt who ſubmitted to the Uſurpation, and the firſt who had declared for the Reſtoration, whoſe poſterity would deem it an honour and happineſs to live in perpetual dependence on the crown of England; that grants had been obtained, under the great ſeal, of large

tracts

tracts of land, contrary to their intereſt and to the profit of the crown. They prayed: That the grand aſſembly might be enabled by a patent of incorporation to purchaſe the northern neck of the patentee; that all lands might be aſſured to the preſent poſſeſſors and owners, and eſcheats granted as formerly, at two pounds of tobacco for every hundred acres; that the governor and council might be empowered to hear and determine all treaſons and other felonies; that the public officers might be obliged to reſide within the colony; that there ſhould be no impoſition laid upon the inhabitants but by their conſent in aſſembly; that Virginia might have no other dependence than on the crown, and might not in future be *cantonized* in parcels to particular perſons.[2] The crown-lawyers, animated by a ſtrong ſenſe of their merits or their wrongs, reported; that it would be equally for the king's ſervice and the public good to grant, not only what was ſolicited, but other privileges which they then ſpecified. The committee of plantations, at the ſame time that it was extremely deſirous to reward the acknowledged loyalty of the Virginians, were not forgetful of the intereſts of England. In November, 1675, it confirmed the report with a few amendments: Adding, in the preſence of the agents, this prophetic condition, with regard to the power of the aſſembly to levy taxes; "that this ſhall be no bar to any impoſition which "may be laid here by the king in parliament."[3] Charles II. approved of the whole, with his uſual facility, and ordered letters patent to be prepared. But the tediouſneſs incident to public buſineſs, perhaps the intelligence, that had reached London, of the ſeditions in the colony, for ſome months prevented the completion of that important tranſaction: And the agents, preſaging that ſome fatal accident might deſtroy all their labours and their hopes, petitioned, in April, 1676, that the charter, which had been for ſome time ſtopped, might paſs. The privy-council, after ſome debate, granted their requeſt. But certain information being received, that a rebellion had broken out in Virginia, the chancellor was ordered "to forbear putting the ſeal to the intended patent."[4] Thus were daſhed the expectations of the agents; thus was for ever loſt a grant of privileges, as ample as it had been juſtly merited: And here commenced a train of evils that long afflicted and well nigh ruined the plan-

tation. How often, alas! have the unworthy intrigues of the factious, or the thoughtleſs precipitation of the multitude, defeated the genuine good of the people! And how much more to be regretted is it, that they will continue to do ſo, notwithſtanding the ſucceſſive remonſtrances of hiſtory!

Mean while the diſaffection of the Virginians ſwelled, with its uſual progreſs, to inſurrection, which ſoon ended in avowed rebellion. The low price of their ſtaple, which no art had hitherto been able to enhance; the improvident grants of land before-mentioned, which had given ſuch juſt offence; the unuſual taxes, which had been lately impoſed on them by the aſſembly, and which the factious gave out would anſwer no good purpoſe, as the agents had been unable to procure a redreſs of their wrongs. All theſe are ſaid to have been the afflictions of the colony, when a war with the Suſquehannah Indians, who lived around the falls of Potowmack, which had ſome time raged notwithſtanding the endeavours of the aged governor to ſuppreſs it, became more general and dangerous; the expence of which the people were taught to believe was intolerable. This laſt event was aſſuredly the immediate, though probably not the true, cauſe, of the rebellion, which broke out in June, 1676. Yet the mal-contents were for ſome months at a loſs on whom to vent their indignation. For, "Sir William Berkeley, the governor, ſays their hiſto-"rian,' had been always induſtrious for the good of the country, againſt "whom, in thirty-five years experience, there had never been one ſingle "complaint." Yet to his age and incapacity was attributed the long and unſucceſsful continuance of the war, and with it the burdens of the people. But, amid the diſtractions of thoſe times, he felt great conſolation from reflecting, that, during the three laſt years, he had received no preſents of the aſſembly. They at length determined to make the Indians feel the whole force of their reſentment. Nathaniel Bacon, who had been taken priſoner during the inſurrection of 1675, and pardoned, who had forgotten the mercy that was ſhewn him, now offered himſelf as their leader: Young, bold, ſeditious, eloquent, he was finely qualified to govern the unreflecting multitude, to lead them whither intereſt, or revenge, or ambition, pointed the way. Him they elected

elected their general. And, in return, he assured them, that never would he lay down his arms till he had revenged their sufferings on their enemies, and redressed their grievances. To give, however, some colour to the authority which he had thus acquired, he applied to the governor for a commission, appointing him general against the Indians: But designs of a different kind were suspected, and, according to the accustomed policy of the weak, he thought it prudent to temporize. And Bacon, having gone too far to retreat with safety, being too vigorous to be easily disconcerted, entered James-Town with six hundred armed followers; and having "besieged the grand assembly, which was then convened to "consult the great concerns of the country, he compelled it to grant "whatsoever he demanded."[6] No sooner however had he retired, than it advised the governor to issue a proclamation, denouncing Bacon a rebel, and commanding his followers to deliver him up, and to retire to their habitations in peace. But, as might have been foreseen, the general and his forces were filled with the greatest indignation at that inconsiderate proceeding; and, instead of marching against the public enemy, instantly returned to James-Town. The governor, unsupported by any real power, and almost abandoned by all, fled precipitately to Accomack, on the eastern shore of the colony.[7] Thus vigour, address, and promptitude, will always prove successful: Timidity, irresolution, and want of concert, never fail to sap and overturn every government when attacked by rebellion.

That power, which Bacon had thus acquired, he employed with great address to add reputation and strength to his party. He called a convention of such gentlemen of the country as adhered to him. And, to justify their own and the general's proceedings, they published a declaration; which, according to the usual practice on such occasions, held up reasons to the vulgar that they did not feel. They inveighed: That Sir William Berkeley had fomented a civil war among the people, contrary to his trust, and without provocation; that he had abdicated the government, and had withdrawn himself, to the great astonishment of the country; that the army raised by the general was for the good of the public, who justified him in all his actions; that the governor having informed

informed the king, as was reported, that their commander and his followers were rebellious, and having adviſed his majeſty to ſend forces to reduce them, it conſiſted with the welfare of the colony, and their allegiance to his moſt ſacred majeſty, that they ſuppreſs all forces whatſoever, till the king be fully informed of the ſtate of the caſe, by ſuch perſons as ſhall be ſent by Nathaniel Bacon. They obliged the inhabitants to take an oath of allegiance to that leader.[8] The wiſe exclaimed: That the pretences and practices of inſurrection are at all times and in every country the ſame. But all remarked; that the manifeſto, which ought naturally to have diſplayed the genuine reaſons of their revolt, mentioned none of the original cauſes of their diſcontents; that it contained nothing but groundleſs accuſations againſt a governor, "who had been the idol of the "people," and had been conſtrained by his ſituation and his duty to oppoſe ſeditions, which were as unjuſtifiable by any principle of law as of reaſon or common ſenſe. Like recent declarations, that conduct of the governor, which was the neceſſary reſult of their own miſconduct, was inſiſted on as the principal cauſe of their revolt: And, as the practices of men placed in ſimilar ſituations are always the ſame, they found many advocates in England, and even within the parliament;[9] becauſe the inſurrection added to the vexation and embaraſſments of their ſovereign, without giving ſpirit to the rebellion.

The governor, in the mean time, having collected the well-affected, to whom he was liberal in promiſes, and being powerfully ſupported by the commanders and ſailors of the Engliſh veſſels which were then in that country, began to oppoſe the inſurgents.[10] Several ſkirmiſhes were fought with various ſucceſs, that were even then of little conſequence, and deſerve not to be now remembered. Few countries have ſuffered greater calamities from their wars, foreign or domeſtic, than did Virginia during the ſhort period of that revolt. A party of the inſurgents, with the improvidence and temerity natural to the rebellious, burnt James-Town, its capital.[11] Thoſe diſtricts of the colony which remained peaceable, and preſerved their fidelity, were laid waſte by the mal-contents with a rage that civil diſcord alone can inſpire. The eſtates of the loyaliſts were confiſcated, as juſtly forfeited to them by their oppoſition,

oppoſition, and appropriated for carrying on the war; and women, whoſe fathers or huſbands obeyed what they deemed the legal government, were forcibly carried along with the ſoldiers, without regard to the delicacies of the ſex or the tendereſt relations of nature."[12] The governor, in his turn, retaliated on the inſurgents. He ſeized the eſtates of many; he executed ſeveral of their leaders by martial law, either as the dictates of reſentment or as the implacable calls of domeſtic contention prevailed. Amidſt all theſe evils, with which his ambition or revenge had curſed his country, Bacon, happily for himſelf and it, unexpectedly ſickened, and died. And there being among his followers no one tolerably qualified to ſupply his place, with the death of their general the flames of war expired. Thus ended, in January, 1676-7, this inconſiderate inſurrection; which, in Virginian ſtory, has acquired the name of Bacon's rebellion; with "the loſs, as we are aſſured, of one hundred thouſand "pounds to the colony."[13] What were the real deſigns of that famous leader and his chief confidents it ſeems now impoſſible to diſcover: But there were not wanting eye-witneſſes, perfectly acquainted with his character and actions, who aſſerted; "that they intended to ſeize the go-"vernment of Virginia into their own hands."[14] Perhaps, like all other inſurgents who have figured on the theatre of the world, they propoſed to take advantage of circumſtances, as they ſhould ariſe, to promote their private views. An aſſembly was convened in the ſubſequent February, which ſeems to have been partly governed by the revengeful ſpirit of triumphant party, but more by an unforgiving ſenſe of wrongs, mutually given and received. It attainted Bacon and a few of his principal officers; it inflicted pains, penalties, and fines, on great offenders; it granted an act of indemnity and free pardon to others; it paſſed an act for the relief of ſuch loyal perſons as have ſuffered loſs by the late rebels; it ſet apart a day of thankſgiving and humiliation; it declared void the proceedings of the aſſembly which had been conſtrained by the threats and violence of Bacon.[14] But the laws, which were now paſſed, were afterwards diſallowed by Charles II. becauſe they were deemed contrary to his proclamation of October, 1676:[15] And the act of attainder

was

was deemed void in the creation, though unjuſtly, for a defect of power in that ſubordinate legiſlature.

That monarch was no ſooner informed that a rebellion had overthrown his government, at a time when he was rewarding with a liberal hand the former loyalty of the Virginians, than he adopted every meaſure that wiſdom ſuggeſted or vigour could execute. He diſpatched Sir John Berry with a ſmall fleet, which tranſported the firſt troops ever ſent to Virginia, to the aſſiſtance of Sir William Berkeley; with orders to proceed againſt the rebels with all ſpeed.[16] He iſſued a proclamation,[17] to be publiſhed within the colony; the contents of which are extremely remarkable: It declared Bacon, and his followers, traitors, and required every one to apprehend them; offering a reward of three hundred pounds to the perſon who ſhould ſeize him:[18] But it granted pardon to all who ſhould take the oath of obedience and give ſecurity for their future good behaviour: Copying the vigorous conduct of the commonwealth, on a ſimilar occaſion, it offered freedom to ſuch ſervants and ſlaves of rebels as ſhould ſerve as ſoldiers for ſuppreſſing the revolt. In order to prevent one cauſe of complaint in future, it aſſerted, "that he had reduced the wages "of aſſembly-men, ſo that they might be no longer burdenſome." He laid an embargo on veſſels bound to Virginia.[19] He wrote letters to the ſeveral colonies; commanding them neither to aid, nor conceal, Bacon, whom he deſcribed as the ſole promoter of the inſurrection.[20] He appointed Sir John Berry, Colonel Jeffereys, who was then nominated lieutenant-governor, Colonel Moryſon, who had been one of the colonial agents, commiſſioners, "to inquire, and to report thoſe things that have occaſioned the late diſtractions:" Giving a reaſon, worthy of a king of freemen; "that redreſs may be given of grievances, to us unknown, "becauſe of the diſtance."[21]

When the commiſſioners arrived, in April, 1677, they found the colony ſettled, after ſuch a paroxyſm of frenzy, into its former repoſe; and, as there was now no field for diſplaying their military talents, they had an opportunity of exhibiting ample ſpecimens of their civil abilities. Colonel Jeffereys immediately iſſued a proclamation; giving notice of his own appointment and of the recal of Sir William Berkeley. Having governed

governed Virginia forty years, in times of great difficulty and danger, with a high reputation, this gentleman lived not to ſee his ſovereign, that he might have ſpoken his own juſtification, and claimed the reward of his long and faithful ſervices. Some time after he had ceaſed to be an object of flattery or of hate, the aſſembly declared, in expreſſions which did honour to both: "That he had been an excellent and well-deſerving "governor." It recommended, to the common ſovereign of both, the payment to Lady Berkeley of three hundred pounds, "as not only a "right, but as due from that colony to his ſervices and merits."[22] What honourable teſtimonies! What encouragement to all future governors to follow the example of Berkeley, in order to merit ſimilar rewards!

The only remarkable event of the ſhort adminiſtration of Jeffereys was, the concluſion of the Indian war which had ſo long raged, which had given riſe to ſuch calamitous events, by a peace that was approved by his ſovereign, "as equally for his ſervice, and for the ſecurity of his ſub-"jects."[23] The commiſſioners, who ſeem to have carried with them the ſtrongeſt prepoſſeſſions in favour of the inſurgents, becauſe their cauſe was popular in England, executed the important truſt confided to them, with a greater degree of zeal than of temper and knowledge. They began their inquiries, according to the uſual practice of men raiſed to ſudden elevation, by cenſuring the conduct of the governor and council, though compoſed of men of the greateſt knowledge of the affairs of the colony. They repreſented the imprudence of the governor, as having chiefly contributed to raiſe the ſtorm, which had laid waſte the province, and brought it to the verge of ruin.[24] They inſiſted, that the activity of ſome of the counſellors was a raſhneſs, which rendered them unfit either for that elevated ſtation, or for farther employment.[25] And the loyaliſts, who had ſacrificed their eſtates and their blood at the altar of duty to their prince, and of attachment to the laws, they diſcountenanced as men who deſerved not favour, becauſe the greateſt favours were unequal to their merits.[26] Having "ſent about the country to deſire the people to bring "in their grievances without fear," almoſt every diſtrict, and every man, exhibited afflictions, that were as different from each other, as they were all diſſimilar to the original complaints of the colony. The happy county

of Weſtmoreland ſaid that it felt no grievances. Accomack claimed, as a reward of its loyalty, an exemption from taxes for one and twenty years.[17] Yet the intemperance of the commiſſioners introduced an evil of greater political magnitude than any that their ſolicitations had been able to procure. "They forced the records of the aſſembly from its "clerk:" And, with a jealouſy and diſcontent, which popular conventions can alone feel, or reſent in proportion to their feelings, the burgeſſes, who were convened by Jeffereys, in October, 1677, "demanded "ſatisfaction of him for their injured privileges;" inſiſting, with a ſpirit uncommon in that age, "that ſuch a breach of privilege could not be "commanded under the great-ſeal, becauſe they could not find that any "king of England had ever done ſo in former times." Yet, at a ſubſequent period, Charles II. in a ſtrain of language which would have done honour to the reign of his grandfather, ordered Lord Culpeper, the ſucceeding governor, "to ſignify the royal indignation at this ſeditious de-"claration, and to give the leaders marks of the royal diſpleaſure."[18] The wife among them remarked, "that impotent expreſſions of reſent-"ment, which are unworthy of men, are always degrading to kings." The governor, however, found it neceſſary rather to conciliate the goodwill of the burgeſſes, than to revive the ſpirit of animoſity, by attempting to obey what he had not power to perform.

The commiſſioners ſoon returned to England; leaving the colony in a ferment; becauſe their conduct and principles had pleaſed neither party. The loyaliſts were highly offended, becauſe they not only felt themſelves neglected, notwithſtanding their merits and ſufferings, but beheld their own and their ſovereign's enemies careſſed: And the mal-contents, whom it was impoſſible to gratify, becauſe their principles prompted them to make new demands, in the late breach of privilege thought they ſaw cauſe to fear for the future. Jeffereys being alſo dead, the adminiſtration devolved on Sir Henry Chicheley, as lieutenant-governor; who was now worn out in the ſervice of his country. The colony ſeems to have ſunk into that lethargic ſtate of debility, which never fails to ſucceed great public convulſions, and which is generally the more deplorable, be-

cauſe

cauſe no remedy, except time and perſeverance in a prudent line of conduct, can either mollify or eradicate the diſeaſe.

In the mean time, however, new grievances were ſuperinduced upon the old. Partly owing to his negligence, but more to the real poverty of Charles II. no money was remitted for paying the few troops which had been carried thither by Sir John Berry, and which were billeted on the inhabitants, and now lived at free quarter: "So that his majeſty's ſub-"jects and ſoldiers, ſaid the governor, are equally diſtreſſed." The quit-rents of Virginia ſeem to have been at all times negligently collected; but being altogether reſigned to neglect, during the three laſt years of diſtraction, the arrears, "amounting to a vaſt ſum, if rigorouſly "collected, would have now fallen heavy upon all, and eſpecially upon "the pooreſt." To be relieved from theſe afflictions, the aſſembly which convened in April, 1679, repreſented to that monarch: "That "the late inteſtine diviſions of the colony, together with the charges of "a tedious war with the Indians, have reduced it to a poor and diſtreſ-"ſed eſtate;" that, out of the ſmall remnants of its ſtock, it had furniſhed his ſoldiers with neceſſaries; and, as in duty it was bound, it ſhould continue its care of them, till he ſhall commiſerate its condition: And, in conſideration of its late loſſes, it ſolicited from his royal goodneſs a remiſſion of all arrears of quit-rents, which the poverty of the colony could not diſcharge; and that they might be appropriated in future to the defence of the frontiers.[29] Thus did Virginia gather the harveſt of woes, that diſcontent had formerly ſown: And thus were the people afflicted with thoſe evils, which the intereſted arts of the factious had begotten on their own credulity.

But, before the friendly repreſentations of the good old governor, or the addreſs of the aſſembly, arrived, Charles II. had often reconſidered the liſt of grievances which the minute diligence of his commiſſioners had procured.[30] And, though many of them were of a nature that it was impoſſible to relieve, yet others were attended to and redreſſed. The improvident grants before-mentioned were recalled. The quit-rents were taken into the royal hands, and they were ordered to be applied in future to the defence of the colony. The arrears, which appeared ſo

vaſt and ſo terrible to the colony, were appropriated for ſatisfaction of the debts of the ſoldiers; who were in future to be ſupported without any charge to the country. And theſe ſalutary meaſures were punctually executed, and aſſuredly proved deciſive: For "the different intereſts "of the coloniſts were ſettled by the ſucceeding governor; the quarters "of the troops were paid off;" and the long enumeration of miſeries, which had been lately ſo much deplored, was reduced, before July, 1680, to one; "the low price of tobacco."[31]

Though Lord Culpeper had been appointed governor of Virginia upon the deceaſe of Sir William Berkeley, he ſeems not to have been impatient to take poſſeſſion of that important charge. His procraſtination offended even the facility of Charles II. and an order was iſſued, in December, 1679, "checking that nobleman for not going on-board."[32] Among other particulars, he was inſtructed to call an aſſembly; which was empowered to eſtabliſh regulations, that ſhould be neither contrary to the laws of England, nor enforced till they received the royal aſſent; to raiſe taxes upon urgent neceſſity, without ſpecial direction or tranſmiſſion of the acts: And he was directed to adviſe the aſſembly to diſcover a mode of taxation leſs grievous than that of a poll-duty, which had been lately complained of; to ſuffer no counſellor, who ſhould be diſplaced, to be elected a burgeſs. The loyalty of Accomack, which had protected the governor in the hour of his diſtreſs, was not, as had too often happened during that reign, conſigned to oblivion; and he was ordered to reward it with a grant of ſpecial favours:[33] But the acknowledgement of its merits ſeems to have been the only recompence which it ever enjoyed.

When the governor arrived, in May, 1680, "he found the country "in peace, all things in good order; except the low price of its ſta-"ple," which bade fair to deſolate the colony.[34] He immediately convened the aſſembly; and before it he laid the ſeveral bills that had been framed in England, and tranſmitted under the great-ſeal.[35] The only laws, which, agreeably to the wiſdom of the Engliſh conſtitution, are framed by the royal hand, are thoſe of grace: And there was now accordingly propoſed to the aſſembly, as the firſt object of its attention, "an

" an act of free and general pardon and oblivion."[36] It recited the late rebellion, and the repentance of the colony: It pardoned all crimes and miſdemeanours committed antecedent to January, 1676; and reſtored all eſtates to the owners, as freely as if they had never been forfeited: But it very properly excepted Bacon, " the principal contriver" of the revolt; ſeveral perſons who had been legally convicted and executed " for their horrid treaſons;" Richard Laurence, " who had fired James-" city," and a few others, if they ſhould exerciſe any office within the colony. For avoiding endleſs proſecutions, all wrongs committed during the rebellion were diſcharged, nor was any ſatisfaction to be required or given; except where the goods of perſons, not actually engaged in it, had been wrongfully taken away, and were found in the poſſeſſion of any one. It provided that no farther puniſhment ſhall be inflicted on Chriſtian ſervants, who had deſerted and been active in the rebellion, than that the period of their abſence ſhall be accounted no part of their time of ſervice. And reciting, that, during the licentiouſneſs of late times, ill-diſpoſed perſons had taken upon them to aſperſe the government, without which the inhabitants could not have been ſo eaſily led away; it impoſed ſevere penalties on thoſe who ſhall maliciouſly ſtir up the people to a diſlike of the governor, or who ſhall by words or writing defame the adminiſtration of the colony.[37] Similar laws againſt " the " propagation of falſe news," ariſing from the ſituation of dependent territories diſtant from the ſeat of government, occur among the more early acts of aſſembly of all the colonies.[38] Happy would it have been for them, perhaps, and for the empire, had they at all times been vigorouſly executed. Never did any country ſuffer ſo much as theſe plantations from the miſrepreſentations of party, or the falſehoods of the intereſted.

The attention of the aſſembly was next directed to " an act for " raiſing a revenue for the ſupport of government."[39] And, for this purpoſe, it impoſed two ſhillings ſterling on every hogſhead,[40] or five hundred pounds of tobacco exported, fifteen pence ſterling a ton on every veſſel coming into the colony, and ſix-pence a poll for every perſon imported; but it expreſſly provided, " that theſe duties ſhall not be

" levied

" levied on Virginian owners of veſſels." And the acts, which impoſed ſimilar duties in the year 1661, were repealed. This law is no leſs remarkable for having commenced with the king, though it was a money-bill, than for exempting thoſe, who, according to modern principles, ought to have been the only objects of taxation. When the acts of that aſſembly, " which did not paſs without difficulty," were tranſmitted by the governor to the committee of plantations, the proviſo in favour of Virginian owners was extremely diſapproved of by them: Aſſigning a reaſon, worthy of the guardians of the general trade of the empire; " that " it was irregular and unequal, giving greater encouragement to ſhips " belonging to the colony than to thoſe of his majeſty's other ſubjects; " and, there being no ſuch difference put upon Virginian owners here in " England, ſimilar exemptions ſhall not be allowed of in future."[41] Yet, however juſt was this reaſoning of the committee, and however contrary to the cuſtom of parliament, which makes no other difference in impoſing taxes than between ſubjects, whereſoever reſident, and aliens, this mode of taxation, ſo contrary to their own doctrines and pretenſions during late times, has been aſſuredly uniform in all the colonies, from their emigrations to the preſent days.[42]

From thoſe important regulations, the aſſembly turned its views to " the preſentation of grievances." And, having remarked, " that it " had been too frequently the practice of ill-diſpoſed perſons to deliver " to their burgeſſes, and they to the aſſembly, ſeditious papers, and to " entitle them the grievances of the inhabitants;" it enacted: That the ſheriffs ſhall, in every county, appoint a time and place, before each aſſembly, for receiving all grievances, which ſhall be ſigned by the party grieved, and atteſted by the chief magiſtrate.[43] Nothing can evince more clearly, than does this law, the practices of former times to promote diſcontent, and how little that aſſembly was governed by party motives, at the ſame time that it entertained a juſt regard for the intereſts of its conſtituents.

The aſſembly endeavoured to promote the true intereſt of Virginia by other ſalutary laws. It paſſed acts " for a general naturalization of fo- " reigners;" for " cohabitation, and encouragement of trade and ma- " nufactures;"

" nufactures;" which were, however, diſſented to in England, becauſe they were deemed " of bad conſequence to the collection of his majeſty's " revenue of a penny a pound on exported tobacco;" for " the conti- " nuation of the garriſons at the head of the four great rivers;" for " licenſing a free trade with the Indians." It tranſmitted at the ſame time an addreſs to Charles II. It repreſented the low price to which had fallen the only ſtaple of the colony: It prayed; that he would prohibit, by proclamation, the planting of it for one year in Virginia, Maryland, and Carolina; thus unwiſely ſoliciting a king of England to exert an authority which the conſtitution had not given him, and which, were it executed in the preſent times, would ſpread through the colonies univerſal inſurrection: It implored him to remit to thoſe, who ſhould conſtantly reſide in towns, the cuſtom of one penny a pound, payable on tobacco; thus admitting the legality of the tax and the conſtitutional authority of that power which impoſed it: It aſked for leave to enhance the value of coins five and twenty in the hundred. And thus have we ſeen the diſorders which then afflicted Virginia, and the remedies which the legiſlature thought it prudent to apply.

The adminiſtration of Lord Culpeper is remarkable for a ſignal change in the juriſprudence of that colony. The aſſembly ſeems to have acquired, in early times, what it aſſerted it had always enjoyed, the power of ultimate appeal from the provincial judicatories. But the burgeſſes inſiſting at length, with the uſual ſpirit of ſuch men, that the counſellors ought not to vote again in a cauſe which they had already determined in the general-court, the inconvenience of admitting the ſole power in the repreſentative branch of the legiſlature was ſeen and dreaded: And that nobleman was inſtructed, notwithſtanding the oppoſition of the burgeſſes, to allow of no appeals from the general-court but only to the king in council. The ſame inſtruction, owing to this unconſtitutional pretenſion, was continued to all future governors of the tranſatlantic provinces. He at the ſame time wreſted from the houſe of burgeſſes the undoubted right of appointing their own clerk, which they did not regain till the reign of Anne. From trivial facts may be often inveſtigated important principles: What muſt have been the power or the

ſpirit

ſpirit of the repreſentatives of the people, when they ſuffered a governor to appoint their confidential officer! Lord Culpeper having thus ſettled the affairs of Virginia, and promoted his own views, departed for England in Auguſt, 1680: Leaving the colony in one of thoſe treacherous calms that often forbode a ſtorm.

Notwithſtanding every endeavour of the aſſembly, a bitterneſs of ſpirit remained, which unhappily prevented the return of former good humour or of peace. And though a variety of regulations were eſtabliſhed at a ſubſequent ſeſſion, "for encouraging its manufactures, for the advancement of its native productions;" no remedy had been found for the low price of its ſtaple which had been ſo long and feelingly deplored. A new and extraordinary cure for this inveterate evil was attempted in May, 1682. Many of the inhabitants, in order to render farther increaſe impoſſible, and incited by thoſe who hoped for gain, aſſociated to deſtroy the tobacco-plants which were preparing for freſh crops. They deſtroyed their own property, and would aſſuredly have laid waſte that of the whole but for the prudent and vigorous interpoſition of the lieutenant-governor,[44] who ſoon re-eſtabliſhed tranquillity: And patroles of horſe, through the diſaffected counties, preſerved the public quiet and order, though the ſame cauſes of diſcontent continued with ſimilar diſpoſitions. Charles II. no ſooner heard of this unexpected inſurrection than he ordered Lord Culpeper, the governor, to repair thither; and, for the preſervation of the dignity of the laws, to puniſh the moſt active of the inſurgents.[45] "Some notorious actors" were indicted for high-treaſon, and executed. "And thus, ſays the aſſembly, they ſuffered ſuch puniſhments as for their crimes and rebellions they juſtly deſerved."[46] This judgement of the legiſlature, with regard to the nature of that offence, is perfectly conſonant to that of the great luminary of the law; who aſſures us:[47] "That, if any attempt, by force, to deliver men out of all "priſons, to caſt down all encloſures, or to any other end, pretending "reformation of their own heads, without warrant, this is levying war "againſt the king, becauſe the pretence is general and public, and not "private." The aſſembly, impreſſed with the enormity of ſuch aſſociations, "declared it high-treaſon for eight or more perſons, being aſ-

"ſembled

" fembled with intent to deſtroy tobacco, and being commanded by a " magiſtrate to diſperſe themſelves, ſhall continue together four hours." [48] And this ſevere law, which neceſſity only could dictate or juſtify, demonſtrates the unhappy temper of the times, when Virginia ſuffered for her former follies or crimes. The ſeverity of example and the terrors of the law long preſerved internal peace; and the people, by a natural progreſs, fell into that ſtate of quietude which is little ſuitable to the activity of man, or promotive of that ardent ſpirit which carries a nation on to wealth and greatneſs.

Lord Culpeper no ſooner returned a ſecond time to England, contrary to his orders, and without leave, than he was ordered into confinement. He was accuſed of having acted inconſiſtent with his inſtructions, and of obtaining from the aſſembly a grant of five hundred pounds out of the revenue for the ſupport of government; the grant of which the committee of plantations inſiſted was illegal: Aſſigning this ſingular reaſon, " that it had no power to give away what had been already ap- " propriated by law." And his commiſſion being for life, an inquiſition of a jury of Middleſex declared it forfeited, and the profits of his office to be now inveſted in the crown. [49] This probably is the only commiſſion, if we except that of lord Delaware before-mentioned, of a governor for life, to be met with in colonial annals: And the imprudence of the meaſure was the genuine cauſe of that nobleman's ruin. Owing to this cauſe, probably, all future commiſſions were given during pleaſure.

Lord Effingham was appointed governor of Virginia in Auguſt, 1683: And to him were given ſimilar powers and inſtructions to thoſe of his predeceſſor; which were varied only by the difference of time and the change of circumſtances. He was ordered, agreeably to the prayers of Sir William Berkeley, " to allow no perſon to uſe a printing-preſs on any " occaſion whatſoever." A mandate, however, which was ſo unfriendly to the intereſts of freedom, was nothing more than the continuance of a regulation that the council of the colony had formerly made, and was no uncommon exertion of its powers during that ſad period of Virginian annals. [50] With that nobleman was ſent a frigate, in order to enforce the

acts of navigation; which, during late times, had been conſiderably diſregarded.

The governor called an aſſembly in April, 1684. It endeavoured, with a laudable ſolicitude, to promote the proſperity of the province by a variety of uſeful regulations.[51] Agreeably to a former recommendation, it now paſſed "an act for leſſening the poll-duty, by laying an impo-"ſition on liquors." It raiſed the general credit of the colony, by declaring, "that debts contracted in Maryland and Carolina ſhall be re-"coverable in Virginia by the ſame lawful means as if contracted there, "notwithſtanding any law to the contrary." It encouraged domeſtic induſtry, by paſſing "an act for the advancement of manufactures of "the growth of the colony;" which however was diſallowed by the committee of plantations, becauſe it was deemed contrary to the acts of navigation. It enhanced the price of its ſtaple, by obliging the inhabitants to make it really more valuable. It provided "for the better de-"fence of the country; for the better preſervation of its peace." Thus did the aſſembly ſow the ſeeds of future proſperity, which Virginia reaped abundantly at a happier period. Lord Howard ſoon after went to New-York, in order to make peace with the Seneca Indians, whoſe depredations had for ſome time infeſted the frontiers of his province; which, by freeing the coloniſts from a war, of all others the moſt to be avoided, enabled them to profit from the ſalutary regulations before-mentioned.[52]

James II. was proclaimed in that ancient dominion "with extraor-"dinary joy;" which, however, was not of long continuance. The Virginians ſoon heard, with regret, that the firſt parliament of that reign had impoſed a tax on the conſumption of their only commodity. Yet, according to the accuſtomed practice of thoſe who are governed by their prejudices, they deplored, as an evil, what ought to have given them ſatisfaction, as the greateſt good. For the duty, by raiſing the nominal price of the merchandiſe, in ſome meaſure augmented its real value. And, actuated by theſe motives, they ſupplicated that prince for a ſuſpenſion of the duty before-mentioned, in expreſſions of ſubmiſſion which did little honour to either party; but in vain. While, under the influence of their hopes and their fears, they affected to rejoice when they

heard

heard of the defeat of Monmouth, they preſented an addreſs of felicitation on that event: Yet, by receiving into their families his convicted followers, who were tranſported thither as ſervants, the coloniſts were put in conſtant remembrance of the paſt, and of events to come: And they made no law, conformably to the orders of their prince, to prevent the unfortunate from redeeming themſelves from a ten years ſervitude, which to freemen was a puniſhment more ſevere than death.[53] Seldom have the views of the colonial planter and the Engliſh merchant been exactly the ſame, though their true intereſts have generally been ſo. The traders to Virginia and Maryland complained to the committee of colonies, in Auguſt, 1687, of the exportation of tobacco in bulk, as equally contrary to the intereſts of the royal revenue, of the navigation of the kingdom, and of fair commerce: And letters were tranſmitted, recommending to the aſſemblies to enact a law for the prevention of an evil which was deemed ſo extremely pernicious. But the legiſlature, animated by ancient prejudice, rather than by juſt attention to the real intereſts of the people, refuſed to concur in a meaſure which would have aſſuredly raiſed the value of a ſtaple, the degradation of which had ſo long diſtracted the colony. The parliament, during the ſubſequent reign, eſtabliſhed that regulation which the aſſembly now miſtakingly denied to the wiſhes of the merchants and the recommendations of their common ſovereign.[54]

Lord Effingham is ſaid to have ſolicited his commiſſion "with the "ſame reſolution, to get money, as his predeceſſor had done." He eſtabliſhed new juriſdictions at the ſame time that an appeal was denied to the aſſembly: He appointed the fees of a variety of officers, which, we are aſſured, "he ſhared with his clerks."[55] He at length became uneaſy among a people by whom he was not perfectly beloved: And, with the permiſſion of his prince, he returned to England, in the beginning of the year 1688. He was accompanied by Ludwel, as agent for the aſſembly, in order to complain of his conduct. But, before they arrived, a mighty change had transferred the allegiance of all parties to new ſovereigns. Some of the colonial grievances were redreſſed, becauſe they were well founded; others were explained, becauſe they aroſe from

the miſtakes of the aſſembly in a point of Engliſh law.[58] But it ought to be remembered, that moſt of the diſputes of free ſtates, during their infancy, proceed from the diſcordant claims of the different branches of their conſtitutions, before time and precedents have fixed the limits of each, and given conſiſtence to the whole.

Though the Virginians, during the reign of James II. recovered in ſome meaſure from the diſtractions of former times, they made no progreſs in the re-eſtabliſhment of their Engliſh liberties. They were then governed by the ſame arbitrary hand as that which ruled in England. They enjoyed little perſonal freedom, becauſe they were allowed no remedy when improperly reſtrained. Being deprived of the liberty of the preſs, they were bereaved of the laſt reſource of the miſerable, the power of complaining. And they ſeem to have little intereſted themſelves in thoſe important events which obliged them to obey new monarchs, though their conſent had not been aſked when their allegiance was changed; becauſe, from the former, they hoped for no good; from the preſent they ſaw cauſe to fear for the future.

AUTHORITIES AND NOTES.

[1] Brit. Emp. Am. 1 v. p. 251; and ſee all theſe facts in Virg. papers, 3 v. p. 25-94.

[2] See the petition and report in the Virg. Ent. 2 v. p. 33-8.

[3] Journal in Plant. Off. vol. 1. p. 71.

[4] Virg. Ent. 2 v. p. 40-6-56. A patent was granted in September, 1676: But it contained few of the important privileges which had formerly been conceded. It granted, out of ſpecial grace, that Virginia ſhall always be dependent on the crown of England, and ruled by a governor, who ſhould be appointed by the king, and reſide within the province; that the preſent poſſeſſions ſhall be confirmed; that fifty acres of land ſhall be granted to every emigrant, for the encouragement of ſettlers; that eſcheats ſhall be confirmed, as formerly, at the rate of two pounds of tobacco for every hundred acres; that the governor and council ſhall be a court of oyer and terminer for the puniſhment of crimes;

crimes; that, in caſe of any doubt, the charter ſhall be explained in favour of the colony. — From Virg. Ent. 2 v. p. 94.

[5] Preſent State, p. 66. Brit. Emp. Am. 1 v. p. 250-3.

[6] Laws, p. 113. This aſſembly was pardoned, under the great ſeal of England, for conſenting to laws, and granting a commiſſion to Bacon, for fear of life. — Virg. Ent. 2 v. p. 91.

[7] Preſent State, p. 74. — [8] Ib. p. 74-6. — [9] Mod. Un. Hiſt. 41 v. p. 358.

[10] Virg. Ent. 2 v. p. 274. — [11] Brit. Emp. in Am. 1 v. p. 257.

[12] *Extract of a letter from Colonel Ludwel, ſecretary of Virginia, who ſaw what he deſcribes, to Mr. Secretary Coventry. Dated* 10 *April*, 1677. — Virg. Ent. 2 v. p. 152.

"I am of opinion it will appear, that the grounds of this rebellion have not proceeded from any real fault in the government, but rather from the lewd diſpoſition of deſperate fortunes lately ſprung up amongſt us, which, meeting with people of like inclinations, eaſily ſeduced their willing minds from their allegiance to their king, and indeed from all fear of God or man, laying before them the plunder of the beſt part of the country, in the vain hopes of taking the country wholly out of his majeſty's hands into their own. But, by the prudent conduct of the governor, with the aſſiſtance of the few that obeyed him, the rebellion was checked, and the country reduced to its obedience. Bacon never intended more by the proſecution of the Indian war, than as a covert to his villainies. The commiſſioners ſent all about the country to deſire the people to bring in their grievances without fear: — If, to have their whole eſtates ſeized and confiſcated, and preſently carried away: If, burning of houſes, with their corn, and proviſions, to the ruin of whole families, where the men were loyal, by a formal pretence of law and juſtice, as being traitors to the country for oppoſing them in their deſtructive actions; ſubmitting all law, reaſon, and juſtice, to *ſic volo, ſic jubeo*, written with their ſwords: If, to have the honour and reputation of thoſe loyal perſons, that ſtood to maintain his majeſty's intereſt here, proſtituted to the baſe liberty of every ſcurrilous tongue: If, torturing people with exquiſite torments for what their laws thought faults: If, raviſhing

raviſhing of women from their homes, and hurrying them about the country in their rude camps, often threatening them with death, becauſe their huſbands and fathers obeyed his majeſty's lawful power here: If theſe, and many more like theſe, are grievances, then, I do aſſure you, there is a truly diſtreſſed party in Virginia."

[13] Brit. Emp. Am. 1 v. p. 255-7. The whole value of warlike ſtores, ſent to Virginia by Sir John Berry, amounted to 11,1781. 3s. 7d. ſterling. — Virg. Ent. 2 v. p. 77.

[14] Laws, p. 113-14. — [15] Virg. Ent. 2 v. p. 224-7. — [16] Ib. 121-6. — [17] Ib. 115-16. — [18] Sir William Berkeley was ordered to ſend Bacon to England for trial. — Ib. 111. — [19] Ib. 134-5. — [20] Ib. 115-6. — [21] Ib. 83.

[22] Ib. 145. See the addreſſes to Charles II. in Virg. Pap. 75 B. 411-12. Sir William Berkeley's memory was defended, againſt the miſrepreſentations of the commiſſioners, by his brother, Lord Berkeley. The defence is in Virg. Ent. 2 v. p. 230; and ſee Journ. Plant. Off. 2 v. p. 77-105. — [23] Ib. p. 131.

[24] The following are the cauſes of Bacon's rebellion, which were aſſigned by the commiſſioners. — From Journal, Plant. Off. 2 vol. p. 170-6-8.

" 1ſtly. Stopping the expedition of Brent and Maſon againſt the Indians, and the murdering of five Indians by the frontier inhabitants, were the principal cauſes. 2dly. There was not ſufficient care taken to ſubdue the Indians. 3dly. The people thought the reaſon why the governor would not appoint a general againſt the Indians was owing to preſent intereſt of his, and they appointed Bacon. 4thly. The governor pardoned him when taken priſoner, and admitted him to be a counſellor. 5thly. He promiſed him a commiſſion as general, which raiſed the expectations of the people; and, when Bacon retired from James-town, they flocked from all parts to join him, and compelled the governor to grant it, which induced them to conſider it as legal."

[25] Virg. Ent. 2 v. p. 210. — [26] Ib. 204. — [27] Journal, 2 v. p. 170-182-192. — [28] Virg. Ent. 2 v. p. 272.

[29] *Extract*

[29] *Extract of a letter, dated 20 May, 1679, from Lieutenant-governor Sir Henry Chicheley, to Mr. Secretary Coventry.* — From Virg. Ent. 2 v. p. 360.

" The incloſed is a letter from the grand aſſembly of Virginia to his moſt ſacred majeſty, being a compendious narrative of this country's ſufferings, and our humble ſupplications for ſuch relief as to his majeſty ſhall ſeem meet. Upon which I beg leave to enlarge in this addreſs to your worthy ſelf, to whoſe province the affairs of this province do properly belong, and of whoſe juſtice and favour, to our low and calamitous condition, myſelf and the whole country are well aſſured, by many paſt inſtances. This preſent ſeſſions, the aſſembly received complaints from the counties of Iſle of Wight, Nanſemond, York, and James-city, in relation to the quartering of his majeſty's ſoldiers. The two firſt named, by virtue of a warrant from the late lieutenant-governor, having received commiſſion to quarter and provide for Major Mutlow's company, from the 14 July, 1677, till 16th January following, for which they are ſtill indebted to the ſaid inhabitants the full and juſt ſum of 249l. 6s. 3d. The two laſt mentioned have yet had no ſatisfaction for twelve months quarters and proviſions, allowed to his majeſty's ſoldiers, now under the command of Captain William Morris, whoſe pay for no part of that time is yet arrived. So that his majeſty's ſubjects and ſoldiers in this colony are equally diſtreſſed. To this may be added, that our late troubles and diſtractions, with the frequent incurſions of Indians for theſe three years laſt paſt, and recent murther of our frontier people, hath ſo much impaired our ſtocks, that the remnant of them will barely give aſſiſtance for defence of the colony and ſupport of our families. I therefore humbly beg your honour, that, in conſideration of the vaſt charge the inhabitants of this colony have been and daily are at for preſervation of this weak and depopulated place, you would be pleaſed to further our humble motion to his majeſty for releaſe of all arrears of quit-rents, which, having been ſo long due, and amounting to ſo vaſt a ſum, would otherwiſe fall heavy upon all, and eſpecially the pooreſt; with this addition, that, for ſuch time as may be agreeable to his majeſty's royal compaſſion, the

money,

money, growing due from the ſame, may be appropriated to defray part of the expence neceſſary for our ſafety. I am, &c.

HEN. CHICHELEY."

Addreſs from the aſſembly, incloſed in the above.

"May it pleaſe your moſt excellent majeſty.

The late inteſtine diviſions of this your majeſty's colony of Virginia, together with the charges of a tedious war with the Indians, who daily make incurſions, and ſometimes murther, upon us, have reduced us to a poor and diſtreſſed eſtate, and enforced us to interrupt your majeſty's moſt weighty affairs with this our humble ſupplication on behalf of your majeſty's ſoldiers and ourſelves. The firſt of which we have, out of the ſmall remnants of our ſtock, furniſhed with what is neceſſary for a twelve-month paſt, and, as in duty bound, ſhall continue our care towards them until your majeſty ſhall be pleaſed to commiſerate both our conditions; and, in regard of our great loſſes we have lately ſuſtained, we hope your royal goodneſs will pardon our requeſt for remiſſion of all arrears of quit-rents due to your ſacred majeſty, and for the ſupply of the exceſſive charges we muſt neceſſarily undergo in the defence of our frontiers, that for ſuch time as your royal wiſdom ſhall allow the ſame to be to that uſe appropriated. — That your majeſty may be protected by the King of kings from all temporal and ſpiritual enemies, and reign long in peace and proſperity, are the inceſſant prayers of, &c.

HEN. CHICHELEY.

MATTHEW KEMPE, ſpeaker."

REMARK. The ſoldiers before-mentioned were the firſt regular troops ſent to the colonies for the ſuppreſſion of a revolt. It was determined, in November, 1681, to diſband them, "unleſs the aſſembly will pay them." — Journ. Plant. Off. 3 v. p. 308. — And they were ſoon after paid off.

[30] Journ. Plant. Off. 2 v. p. 73-170-182-276-8-283-92. — [31] Virg. Ent. 2 v. p. 268-9-364-384. — [32] Ib. 230-375. — [33] Ib. 330-40. — [34] Ib. 379-85. — [35] Ib. 395. — [36] Laws, p. 129. — [37] Ib. 132.

[38] Ordinances of New-England abridg. p. 67-8; Pennſylv. Laws, appendix; Laws of Maryland, 1671, ch. 4. "Thou ſhalt not raiſe a falſe

"report,"

"report," was the precept of Moſes. — Exod. ch. 23. v. 1. — And this ſalutary rule was vigorouſly enforced by a law of Alfred, that admirable founder of the juriſprudence of England; which declared, "That who-"ſoever ſpreads a falſe report among the vulgar ſhall have his tongue "cut out." — Obſerv. ancient Stat. p. 257. — [39] Laws, p. 133.

[40] The amount and appropriation of this duty, in the year 1675, was as follows.

Money collected on 23,036 hhds. of tobacco exported, at 2s. a hhd. is — — — — — — — — — — — — — — £.2303 12 0

Paid out of this ſum — namely:

The governor's ſalary, by the royal inſtruction, £.	1000	0	0
Ditto, by the aſſembly, in lieu of 10s. a hhd. —	200	0	0
Allowed the council by ditto — — — —	250	0	0
Charges of collection — — — — — —	314	19	2½
Auditor's ſalary, at 5 per cent. on £.1988 12 9½ -	99	8	7½
Incidental charges — — — — — — — —			
Balance in favour of the colony — — — —	439	4	2
			£.2303 12 0

The collection was, in the year 1676, on 25135 hhds of tobacco exported; and the appropriation was exactly ſimilar, except as to caſual expences. But theſe were far from the whole of the taxes levied on that colony by the authority of the aſſembly, excluſive of parliamentary duties, or all its provincial diſburſements.

The aſſembly of 1676 ſtated the public account thus:

Various internal charges — — — —	753,669 cwt. of tobacco.
The maintenance of eight forts — —	387,270
Total,	1,140,939 at 10s. per cwt.

When the paucity of the inhabitants is conſidered, this muſt be allowed to have been a taxation of conſiderable magnitude: Had it not been paid in kind, and in a commodity which was not then of great value, it would have been inſupportable. The ſum remitted to England, in the year 1675, to defray the expences of the agents, was £. 2895 13 10 ſterling; which was appropriated by the aſſembly, in the ſubſequent year,

" for ſatisfaction of the public debts." — See all thoſe accounts detailed in Virg. Ent. 2 v. p. 165-7-174-7-138-9.

[41] Ib. 384-5-8-94. —— The whole cuſtom on tobacco from Virginia, collected in England in the year 1676, was £. 135,000; of which was exported to the amount of £. 35,000: Probably Maryland was included. — Ib. 240.

[42] Already have we remarked the commencement of the practice, of exempting thoſe who were, and of impoſing the duty on thoſe who were not repreſented, in the provincial legiſlatures of Virginia, of Maryland, of Connecticut, ſoon after the Reſtoration. By the ancient ordinance of Maſſachuſets, all ſhips anchoring in any port of the juriſdiction were obliged to pay half a pound of gunpowder for every ton, " excepting " ſuch ſhips whoſe owners are inhabitants of this country." — Ordinances abridged, p. 90. — A tonnage duty was impoſed by the aſſembly of Rhode-Iſland, in the year 1704, on all veſſels " not wholly owned " by the inhabitants of this colony." — Laws, p. 49. — The aſſembly of New-York impoſed, in 1709, two ſhillings a ton on every veſſel, " the " one half of which does not belong to the inhabitants of the colony." — Laws, p. 97. — The aſſembly of Pennſylvania impoſed 5l. on each convict imported, to be paid by the importer: And, though the Pennſylvanians are not expreſſly exempted; yet, as the Britiſh merchants, who were characterized " as perſons importing convicts for lucre," were the only importers, they alone were the objects of a tax in other reſpects extremely exceptionable. — Laws, 293. — The laws of Maryland obliged " non-reſidents" to pay a variety of duties toward the maintenance of their free-ſchools: And, in the year 1715, the duties payable on the importation of negroes, ſervants, liquors, were declared " not to extend " to ſuch as were imported in veſſels whoſe owners are all reſidents in " the province." — Laws, 1704, ch. 27. 1715, ch. 36. — The aſſembly of South-Carolina, in the year 1701, impoſed a duty of three farthings a ſkin exported by reſidents, but double if ſent out in Engliſh veſſels: Againſt which, however, the commiſſioners of plantations remonſtrated to the proprietaries of that province, " as a great diſcouragement to the " trade of England." — Carolina Ent. 3 v. p. 85-6. — Thoſe various duties,

duties, being actually collected, the Britiſh ſubjects, who were not repreſented in the legiſlatures that impoſed them, contentedly paid, till they were totally excluded from the colonial commerce. Nor was a mode of taxation, ſo univerſal and ſo contrary to their own precepts, practiſed only antecedent to the epoch of the ſtamp-act, when the modern doctrines were firſt authoritatively inſiſted on. Even as late as the year 1773, a duty, not altogether the ſame, but ſimilar in principle, was impoſed by the aſſemblies of Maryland and Virginia on all veſſels ſailing into Cheſapeake-bay, for building and ſupporting a light-houſe on Cape Henry. — Laws of Maryland, 1773, ch. 29. — There was here indeed no exemption of the coloniſts: But, as the commerce of thoſe plantations was chiefly carried on by non-reſidents, they were the chief objects of the laws and of the taxation. How different has been the practice of ſtateſmen and legiſlators, at all times, and in every country, from the reaſonings of the theoriſt and the party-man!

[43] Laws, p. 137. — [44] Brit. Emp. Amer. 1 v. p. 260-1. — [45] Jour. Plant. Off. 4 v. p. 31-4. — [46] Laws, p. 146. — [47] Coke's 3d Inſtitute, p. 9. — [48] Laws, p. 146. — [49] Journ. 4 v. p. 187-190-2. — [50] Ib. p. 177-208. — [51] Laws, p. 149-152-3. — [52] Journ. 4 v. p. 233.

[53] Brit. Emp. Am. 1 v. p. 264; Virg. Pap. 76, p. 202-11-32.

The following *ſtate of Virginia*, which was delivered to the committee of colonies in December, 1681, by Lord Culpeper, is ſubjoined; becauſe it is ſupplementary to that of Sir William Berkeley; it contains ſeveral intereſting particulars of the condition of that ancient dominion. — From Virg. Pap. 75. B. 446.

The houſe of burgeſſes conſiſts of forty-one perſons; viz. for twenty counties two, and one for James-Town.

The charges of government are maintained: 1. By private levies raiſed in each pariſh, for the miniſter, church, courts of juſtice, burgeſſes wages, &c. which are never brought to the audit, and yet are high, unequal, and burdenſome, to the people, as any other; being moſt commonly managed by ſly cheating fellows, that combine to defraud the public, and ought to be ſuperviſed by the government.

2. By public levies, raiſed from time to time, by act of aſſembly, and accounted for in aſſembly; which, though much better ordered than the firſt, is and hath been, I believe, often miſapplied; both theſe impoſitions are raiſed on the tithables, or working hands, of which there are about 14000 in the colony; a method extremely unequal and chargeable in the raiſing of it, (at leaſt 20 per cent.) cauſing prodigious quantities of traſh tobacco to be raiſed, which not only clogs the market, but diſparages the commodity, and ruins the country: Could the aſſembly be induced to raiſe much leſs on the importation of liquors, &c. it would go a great way to remedy our ſad condition.

3. By the two ſhillings a hogſhead, with one ſhilling and three-pence a ton, paid for fort-duties, which amount to 3000l. a year; and, if well collected, might amount to 600l. more.

[REMARK. Theſe taxes were paid only by thoſe who were not repreſented in the aſſembly, by the Britiſh merchants.]

As to judicature: There are county-courts in each of the ſaid twenty counties, of which there are three in the year; from whence there lies an appeal to the governor and council; and from them heretofore to the aſſembly, but now to his majeſty in great cauſes. [300l. ſterling.]

The eccleſiaſtical government is under his majeſty's governor, who grants probates of wills, and doth or ought to preſent to all livings, which ought to be worth threeſcore pounds a year, and are in number 76 or 7: But the poorneſs of the country, and the low price of tobacco, have made them of ſo much leſs value, ſcarcely the half; and the pariſhes, paying the miniſters themſelves, have uſed to claim the right of preſentation, (or rather of not paying,) whether the governor will or not, which muſt not be allowed, and yet muſt be managed with great caution.

As to the military power: There is not one fort in the whole country that is defenſible againſt an European enemy. I do not think it poſſible to ſecure ſhips any where againſt a ſuperior ſea force. There may be 15000 fighting men in the country; and yet they uſed to count 300 an army royal.

In relation to our neighbours: Carolina (I mean the North part of it) always was and is the ſink of America, the refuge of our renagadoes, and,

and, till in better order, dangerous to us. Maryland is now in a ferment, and not only troubled with our diſeaſe, poverty, but in a very great danger of falling in pieces; whether it be that the old Lord Baltimore's politic maxims are not followed by the ſon, or that they will not do in the preſent age: In a word, it is ſo far from being in a condition to aſſiſt us, that it is worthy of your lordſhips prudence to take care of Maryland, as well for the ſake of Virginia as his own; for, if ſome ſpeedy and effectual courſe be not taken, we ſhall ſoon be involved in the ſame fate.

In relation to the Indians: We are at preſent at peace with all, at leaſt in war with none, but there is no relying on them; and, when we leaſt ſuſpect any thing from them, we have, by long experience, found ourſelves in moſt danger.

But that which is more to us than all other things, which bids fair to be the ſpeedy and certain ruin of this colony, is the low or rather no price of the only product of our lands, and our only commodity, tobacco: A thing ſo fatal and deſperate, that it is almoſt impoſſible to remedy it: For the market is overſtocked, and every crop overſtocks it more. Our thriving is our undoing; and our buying of blacks hath extremely contributed thereto, by making more tobacco: We are too many for that, and too few for any thing elſe.

THOMAS CULPEPER.

REMARK. The general policy of Virginia, as above deſcribed, has continued to the preſent times. The number of half-armed train-bands in the year 1680, as ſtated by general Smith, from actual returns, were - - - - - - - - 7268 foot,
1300 horſe.

8568 — Virg. Pap. 76. p. 95.

The following letter from James II. to Lord Effingham, with regard to the followers of Monmouth, who had eſcaped the cruelties of Jefferеys, is publiſhed, in order to ſhew the temper of that prince, and the ſingular ſituation of his miniſter. — From Virg. Ent. 4 v. p. 63.

JAMES,

JAMES, R.

Right truſty and well beloved, we greet you well. As it has pleaſed God to deliver into our hands ſuch of our rebellious ſubjects as have taken up arms againſt us, for which traiterous practices ſome of them have ſuffered death according to law, ſo we have been graciouſly pleaſed to extend our mercy to many others, by ordering their tranſportation to ſeveral parts of our dominions in America, where they are to be kept as ſervants to the inhabitants of the ſame: And, to the end their puniſhment may in ſome meaſure anſwer their crimes, we do think fit hereby to ſignify our pleaſure unto you, our governor and council of Virginia, that you take all neceſſary care that ſuch convicted perſons, as were guilty of the late rebellion, that ſhall arrive within that our colony, whoſe names are hereunto annexed, be kept there, and continue to ſerve their maſters, for the ſpace of ten years at leaſt. And that they be not permitted in any manner to redeem themſelves, by money or otherwiſe, until that term be fully expired. And, for the better effecting hereof, you are to frame and propoſe a bill to the aſſembly of that our colony, with ſuch proviſoes and clauſes as ſhall be requiſite for this purpoſe, to which you, our governor, are to give your aſſent, and to tranſmit the ſame unto us, for our royal confirmation. Wherein expecting a ready compliance we bid you heartily farewel. Given, at our court, at Whitehall, the 4th of October, 1685, in the firſt year of our reign.

SUNDERLAND.

REMARK. It is a problem in the annals of thoſe times, and there are queſtions in hiſtory of as difficult ſolution as in the ſciences, Whether the prince of Orange encouraged Monmouth, or connived at his enterprize, in order to draw advantages from events to himſelf. The baniſhed followers of that once-popular nobleman were pardoned by King William in December, 1689. — Journ. in Plant. Off. 6 v. p. 306. — It is a ſingular ſpectacle, to ſee the ſame miniſter, who had promoted the rebellion, ſign the order for the tranſportation and ſervitude of the miſerable victims of his perfidy. — See Sir John Dalrymple's Mem. 1 v. p. 125-6.

[54] Virg. Ent. 4 v. p. 161-215. By the ſtatute of 10 & 11 William III. ch. 21. ſ. 29. it was enacted, that no tobacco ſhould be exported by the colonies,

colonies, except only in caſk or cheſt. By the ſtatute of 1 James II. ch. 4. a duty of 3 d. per pound was impoſed on the conſumption of tobacco in England.

[55] Brit. Emp. in Am. 1 v. p. 263-4.

[56] Journ. Plant. Off. 6 v. p. 146-244-5. There is no clearer propoſition of Engliſh juriſprudence than this; that, where a ſtatute, which annulled a law, is itſelf repealed, the rule, that had been abrogated, inſtantly revives. Yet one of the grievances, complained of by the burgeſſes of Virginia, was; that Lord Effingham, having by a proclamation declared the royal diſſent to an act of aſſembly, which repealed a former one, gave notice that the abrogated law was now in force. This was deemed an exertion of legiſlation. And on this ſubject vehement debates enſued between the two houſes of aſſembly; the burgeſſes inſiſting that the governor's conduct was unconſtitutional; the upper houſe contending that it was a mere act of the uſual executive power, and perfectly conſiſtent with law. Happy is the country which has no other grievance to complain of! Lord Effingham was re-appointed governor of Virginia by King William. — Journ. Plant. Off. 6 v. p. 217-20.

CHAP.

CHAP. XV.

Maryland flouriſhes. — Its gratitude. — The founder of the province dies. — Its ſtate. — He is ſucceeded by Governor Calvert. — Laws paſſed. — The gratitude of the aſſembly. — He returns to England. — Complaints againſt him. — Seditions in Maryland. — Freſh complaints againſt him. — Laws for the encouragement of domeſtic induſtry. — James II. proclaimed. — A writ of quo-warranto ordered againſt the charter. — The birth of a prince celebrated. — The government of the proprietary overturned.

WHEN the Reſtoration re-eſtabliſhed his authority, the proprietary, with his wonted prudence, appointed Charles Calvert, his eldeſt ſon, governor of Maryland; in order that he might know the people, and learn how to rule them. In the beginning of the year 1662 he aſſumed the adminiſtration: And, may we decide from the various "acts of "gratitude," which were paſſed by the aſſembly, he followed, with the greateſt ſucceſs, the ſalutary maxims of his father. He convened the legiſlature in April, 1662; and, with a ſpirit natural to Engliſh ſubjects, it paſſed "an act concerning proceedings at law:" Declaring, that, in all caſes where the uſages of the province are ſilent, juſtice ſhall be adminiſtered according to the cuſtoms and ſtatutes of England, if pleaded, "ſo far as the court ſhall judge them not inconſiſtent with the "condition of the colony." The act, which thus engrafted the juriſprudence of England upon that of Maryland, was at different times continued till the year 1684: But, though the legiſlative energy was then withdrawn, the rule continued to the preſent times; becauſe it was really an eſſential principle of the common-law. The intereſts of agriculture were promoted by an "act for the encouragement of the ſow-"ing of Engliſh grain." And other laws of political œconomy, which were then made, evince equally the condition of the colony, and the wiſdom of the legiſlature.

The public tranquillity was diſturbed in thoſe days, as well by the encroachments of the Dutch on the weſtern banks of the Delaware, which they

they had commenced ſome years before, as by the incurſions of foreign Indians, which with their uſual inconſtancy they had lately begun. The vigorous remonſtrances of Calvert obliged the Hollanders to deſert the Whorekill and the country around Cape Henlopen, of which he inſtantly took poſſeſſion: And his prudence reſtored peace with the tribes, which was confirmed in May, 1666, by an act of aſſembly. The fidelity of the allies of the province, the Indians of Choptank, was ſoon after rewarded, by ſettling on them and their deſcendants a conſiderable territory: And being aſſured to them, at different times, by various acts of the legiſlature, it continued in their poſſeſſion till the preſent days; when it was ſold for a conſiderable price, under the inſpection of Johnſon, the famous ſuperintendant of Indian affairs. Not only the prior weakneſs, but the final expulſion of the Dutch from the Delaware, obliged many of their coloniſts to emigrate to Maryland; where they were received with attention; and, being naturalized in conſiderable numbers, were incorporated completely with the ancient inhabitants. Internal quiet, which is always ſo deſirable, becauſe it is ſo extremely advantageous, was preſerved, partly by an act, paſſed in March, 1671, "againſt the "divulgers of falſe news," but more by the real wiſdom of Calvert's adminiſtration over a people, who had baniſhed diſtruſt as the greateſt of evils.

While diſcontent, inſurrection, and rebellion, laid waſte Virginia, Maryland ſeems to have enjoyed all the bleſſings of peace and proſperity under the wiſe and equitable government of the excellent founder of that province. Nor was it inſenſible of its felicity, or ſlow in making ſuitable returns. The aſſembly, "reflecting with gratitude on the unwearied "care of the proprietary, and the vaſt expence that he had been put to "in preſerving the inhabitants in the enjoyment of their lives and liber-"ties, and the increaſe and improvement of their eſtates," paſſed a law, in the year 1671, "for his ſupport, and defraying the charges of go-"vernment:" It impoſed a duty of two ſhillings ſterling on every hogſhead of tobacco exported; the one-half of which was to be applied towards maintaining a magazine of arms and diſcharging the neceſſary expences of government; the other half was ſettled on the proprietary,

in conſideration of his receiving merchantable tobacco, for his rents and alienation fines, at two-pence a pound: Giving as a reaſon, what good-ſenſe might have adopted for its own; "That, as government is neceſ-"ſary for the ſupport of all ſocieties, the charges of that, without "which they cannot ſubſiſt, ought in reaſon to be borne by thoſe whoſe "conſervation depends upon it." And this was ſoon after continued, during the life of the heir of the proprietary, by what the aſſembly called, "an act of gratitude to Charles Calvert, the governor;" which, while it expreſſes the ſenſe of the colony, does great honour to both; becauſe it ſhews, that the one had merited, and the other was grateful. And theſe laws demonſtrate, as well the ſpirit of the aſſemblies of thoſe days, as the happineſs of the coloniſts under the excellent rule of the father of Maryland, and his immediate ſucceſſor, though they were Roman-Catholics. Nor was the true intereſt of the province forgotten amid their attentions to the emolument and gratification of the firſt magiſtrate. Among a great variety of regulations, that were then eſtabliſhed with a view to promote its commerce, or to direct the courſe of its induſtry, the aſſembly paſſed acts for "encouraging the importation of negroes "and ſlaves;" for "making void and puniſhing fraudulent practices, "tending to defraud real purchaſers and creditors;" for "quieting poſ-"ſeſſions;" for "the advancement of foreign coins;" "for the en-"couragement of the ſowing and making of hemp and flax." And we may thence form an opinion of the ſtate of the colony, and of the purſuits of its inhabitants.

Cecilius, the father of his province, having lived to enjoy what few men ever poſſeſs, the fruit of the tree which his own hands had planted and watered, died in the beginning of 1676, covered with age and reputation, in the forty-fourth year of his government. Too honeſt a man to ſcatter the idle theories of the projector among the million, he publiſhed no ſcheme of ideal commonwealths to delude his followers; and too wiſe not to mark the ſolid texture and excellent balance of the Engliſh conſtitution, he reſolved to build upon its plan, and to rear that of Maryland with all poſſible conſimilarity. After a few gradual changes, proceeding from the increaſe of population and alteration

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of circumſtances, the preſent form was ſoon eſtabliſhed, which has happily continued to the preſent times. In the proprietary, the council, and houſe of burgeſſes, we ſee the king, the lords, and commons, of England, in miniature. In contemplation of the many bleſſings poured on that province by his unwearied care, we have obſerved the aſſembly recognize his rights, that it might remain as a memorial, to all poſterity, of their thankfulneſs, fidelity, and obedience. It was his conſtant maxim, which he often recommended to the legiſlature; "That, by concord, "a ſmall colony may grow into a great and renowned nation; but that, "by diſſenſion, mighty and glorious kingdoms have declined and fallen "into nothing." On his tomb-ſtone ought to be engraven: "That, "while fanaticiſm deluged the empire, he refuſed his aſſent to the repeal "of a law; which, in the true ſpirit of Chriſtianity, gave liberty of con-"ſcience to all."

The rules of colonial adminiſtration, which the proprietary had thus adopted and practiſed, were probably ſucceſsful beyond his warmeſt expectations. For he lived to ſee the plantation, that he had eſtabliſhed, grow almoſt to maturity, which increaſed daily in vigour and in fruitfulneſs. The province had been divided into ten counties, and it then contained about ſixteen thouſand inhabitants; of whom the Roman-Catholics were to the number of Proteſtants in the proportion of one to a hundred: But there were no pariſhes laid out, nor churches erected, nor public maintenance granted for the ſupport of a miniſtry; and there were then in Maryland only three clergymen of the church of England. One of theſe, who thought he was well aſſured of what he wrote, repreſented: "That the Lord's-day was openly profaned, religion was de-"ſpiſed, every notorious vice was committed; ſo that the province is "become a Sodom of uncleanneſs, and a peſt-houſe of iniquity." But, in all likelihood, this hideous picture is greatly overcharged. The ſole intention of the painter was to diſplay to the archbiſhop of Canterbury the neceſſity and the uſe of a religious eſtabliſhment; the laws, the execution of which was committed to the various inqueſts, aſſuredly prohibited the evils and the crimes which were ſo greatly deplored: And it may be ſafely aſſerted, that there exiſted in thoſe days no other offences,

either againſt the municipal or divine precepts, than generally prevail in countries ruled by the mildeſt of governments, where the inhabitants live widely ſcattered over the face of the country, and every man enjoys the ſhade of his own tree without moleſtation.

Charles Calvert, who had governed the province from the year 1661, with a high reputation for virtue and abilities, ſucceeded his father as proprietary in the year 1676. He immediately convened an aſſembly, in which he preſided in perſon. And they performed, on that occaſion, what has been often recommended to other legiſlatures, but ſeldom executed: They carefully reviſed the whole code of laws; they repealed the unneceſſary; they explained the obſcure; they confirmed the ſalutary.[6] Whether from the too great numbers brought in, or from an apprehenſion perhaps that their vices might contaminate the morals of the coloniſts, the introduction of criminals was then deemed an inconvenience: And a law was paſſed "againſt the importation of convicted perſons into the "province;"[7] which was continued, at different times, till towards the beginning of the reign of Anne. Tranſportation, as a puniſhment, was unknown to the common law of England; yet it permitted the felon, who choſe rather to loſe his country than his life, to abjure the realm: It was a ſtatute[8] of Elizabeth which firſt inflicted "baniſhment on dan-"gerous rogues." And it was James I. who, without any regard to this law, but by the plenitude of his prerogative royal, adopted the meaſure of "ordering diſſolute perſons to be ſent to Virginia." A practice, conformable to the uſage of all other nations that have colonies, and ſimilar to that of modern times, of tranſporting felons, to atone, by ſervitude, for their offences againſt the laws,[9] commenced ſoon after the Reſtoration;[10] probably from the ſtatute,[11] which empowered the king, as we have remarked, to ſend Quakers convicted to the colonies. But this is the firſt act of aſſembly which occurs for reſtraining a practice that had become inconvenient or diſagreeable. Yet men of diſcernment muſt perceive, that this and every law of a ſubordinate legiſlature, which was paſſed to reſtrain a meaſure that was allowed and encouraged by acts of parliament, were void in the creation; becauſe contrary to the principles of their connexion. The aſſembly at the ſame time eſtabliſhed various regulations

regulations which demonſtrate its good ſenſe and genuine patriotiſm. No ſooner did the proprietary communicate his intention of returning to England than the burgeſſes "conſidering that he had lived long in the "province, and had done the people many ſignal favours, as a token of "their love, duty and reſpects, unanimouſly deſired his acceptance of "all the public tobacco, which remained unappropriated, requeſting the "concurrence of the upper houſe;" [12] becauſe without that their propoſed liberality would have been ineffectual. And that conduct and thoſe expreſſions, which, at the ſame time that they reflect the higheſt honour on both, ſhew all rulers what they owe to their people, engaged his laſting affection, and inſured their future gratitude. [13]

When the proprietary, however, arrived in England, he was ſaluted with the voice of complaint. The biſhop of London repreſented, to the committee of plantations, the deplorable ſtate of Maryland with regard to religion; that, while the Roman-Catholic prieſts were endowed with valuable lands, the Proteſtant miniſters of the church of England were utterly deſtitute of ſupport; whereby immorality reigned triumphant there. Lord Baltimore, in juſtification of himſelf and the province, ſhewed the act of 1649, concerning religion; which had been confirmed in the year 1676, as a perpetual law, and which tolerated and protected every ſect of Chriſtians, but gave ſpecial privileges to none. He aſſerted, that four miniſters of the church of England were in poſſeſſion of plantations, which afforded them a decent ſubſiſtence: But that, from the various religious tenets of the members of aſſembly, it would be extremely difficult, if not impoſſible, to induce it to conſent to a law that ſhould oblige any ſect to maintain other miniſters than its own. However ſatisfactory and deciſive was this anſwer, it ſeems not to have procured perfect acquieſcence. The committee declared, that they thought fit there ſhould be ſome maintenance for the clergy of the church, and that he ſhould propoſe ſome means for the ſupport of a competent number: And the pious miniſters of Charles II. commanded, that the laws againſt vice ſhould be punctually executed. [14] Virginia complained of it as a grievance, inconvenient and dangerous, that Maryland did not protect its frontiers againſt the incurſions of the Indians. But the proprietary,

tary, attending, in purſuance of an order, to anſwer this charge, informed the committee of colonies, that the peace with that people bordering on his province had held for twenty years, which was annually confirmed; that, in all his treaties with them, Virginia was expreſſly included: And he "produced ſeveral teſtimonial letters, and his com-"miſſions and inſtructions to the governor and council, vouching his "aſſertion." This evidence was too convincing not to ſatisfy the moſt prejudiced. The committee reported to that monarch, "that due care "had been taken by him to include Virginia; but that, in her alliances, "ſhe had not been equally careful of the intereſts of Maryland."[15] Notwithſtanding this defeat, that dominion ſoon after renewed its attack. She complained, that the proprietary had endeavoured to compel veſſels navigating Potowmack to enter in his ports, in order to gain from the duties payable for anchorage.[16] But nothing could be worſe founded, or more unjuſt, though extremely ſpecious, than this accuſation. For the words and the intention of his charter extended the boundaries of the province, and conſequently its juriſdiction, to the ſouthern margin of the river; and ſuch veſſels muſt therefore have been neceſſarily ſubject to its laws. During the reign of William, however, when colonial patents were not much attended to, this pretenſion of Maryland was derided, as equally frivolous and inconvenient.

Having thus, by his prudence, ſilenced all complaints for the preſent, by ſhewing the falſehood of them, the proprietary returned to Maryland, and convened an aſſembly; wherein he preſided in perſon. In order, probably, to comply with thoſe orders, which had been ſo piouſly given, an act was paſſed,[17] "for ſpeedy ſuppreſſion of crimes, and li-"miting their puniſhments, when proſecuted in the county-courts:" A law had been already enacted, "for keeping holy the Lord's-day."[18] Thoſe inconveniences, which that province ſuffered from the depreciation of its ſtaple, and which the Virginians felt ſo much and reſented ſo outrageouſly, if not altogether removed, were at leaſt greatly diminiſhed, by the encouragement given to provincial productions, and to colonial commerce. Laws were accordingly enacted, for "promoting tillage, "and raiſing proviſions for exportation;"[19] for "reſtraining the ex-

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"port of leather and hides;"[20] for "the ſupport of tanners and ſhoe-"makers;" for "encouraging the making of linen and woollen cloth."[21] Thus early did the legiſlature attempt to introduce manufactures into Maryland; but nature and peculiar circumſtances concurred to obſtruct them; and, though domeſtic induſtry has produced ſome things for domeſtic uſes, it has not yet become a manufacturing country. "For the "advancement of trade,"[22] a variety of ports was erected; where merchants were to reſide, and commerce was to be carried on: And here all ſhips trading thither were obliged to unlade the commodities of Europe, and to take on-board the productions of the province. But, from the ſituation of the country, full of navigable rivers, and from the immenſe number of ports erected, every planter deſiring to have one on his own plantation, this ſalutary regulation was attended with very little effect. Conſiderable inconvenience ſeems to have ariſen in thoſe days, becauſe traffic was extremely impeded, from "the great want of ready-money:" And, to remedy this evil, a law was made "for the advancement of "coins:"[23] French crowns, pieces of eight, and rix-dollars, were to be received in all payments, at ſix ſhillings each; all other coins at the advance of threepence in the ſhilling; the ſixpences and ſhillings of New-England were to be received, according to their denominations, as ſterling. Contracts appear to have been at that time made, and accounts kept, in tobacco; and the coins then advanced were to be taken at the rate of ſix ſhillings for every hundred weight of that commodity; with an exception, however, as to the payment of the proprietary's rents, and proteſted bills of exchange. If we except an act which was made in the year 1671, ſomething ſimilar to the preſent, this is the law which firſt gave riſe, in Maryland, to colonial currency, in contradiſtinction to ſterling money: And, though the value of coins has greatly fluctuated, this has continued to be the *legal currency* of the province to the preſent times.

But, amid all this ſeeming cordiality, and the mutual endeavours of all to promote the true intereſts of the province, there lurked the ſeeds of preſent diſcontent and of future inſurrection. The fiction of the popiſh plot, that has ſtained the annals of England with ſo foul a die, extended its

its baneful influence even to Maryland, and was by other politicians made the corner-ſtone of ſimilar projects. — The rebellion in Scotland; the diſcontents in England; the vehement diſputes with regard to the excluſion of the duke of York from the throne; the continued diſagreement between the king and parliament: All appeared, in a country ſo diſtant from the ſeat of government and of juſt information, through the uncertain medium of rumour, to forebode the ſame civil wars, which, in the late reign, had drenched three kingdoms with blood. And parties, and men, prepared to draw thoſe advantages to themſelves, that have been ever made in the colonies from the diſtractions of the parent ſtate. Fendal, who had raiſed inſurrection againſt the adminiſtration of Cromwell, and betrayed the government of the proprietary, now uſed the lenity, which had been ſhewn him, to promote commotions in Maryland. He ſeems to have had no other view than to ſcramble for property and power, amid thoſe convulſions that might enſue: And he inſiſted to thoſe of ſimilar views, who liſtened with attentive ears, "that, during the wars of England, they "might eaſily poſſeſs themſelves here of what eſtates they pleaſed."[24] But the proprietary, partly by the triumph of Charles II. over his opponents ſubſequent to the diſſolution of the Oxford parliament, but more by a vigorous application of the laws, preſerved the tranquillity of the province. Fendal was tried, in the year 1681, for ſeditious practices; and, though the acts of aſſembly had annexed the penalty of death to the offence of which he was convicted, he was now only fined and baniſhed the province for ever.[25] Among others, who were proſecuted for the ſame offence, John Coode was acquitted, who lived to command in the place where he was then arraigned as a criminal. And a few others, of leſs guiltineſs, were puniſhed by fine.[26] Thus vigour and prudence conjoined will ever prove ſucceſsful. But a new ſcene of trouble at this time opened, by the arrival of the followers of William Penn on the banks of Delaware, which cloſed only with the diſunion of a large portion of the province.

The "late troubles in Maryland" were made a foundation, whereon were raiſed freſh complaints, againſt the proprietary, in England, "of "partiality to papiſts." It was in vain for him to repreſent; that the laws

laws of his province gave equal encouragement to men of every ſect, without favouring any; that he had endeavoured to divide the offices of his government as nearly equal, among Proteſtants and Roman-Catholics, as their different abilities would permit; that he had given almoſt the whole command of the militia to the former, who were entruſted with the care of the arms and military ſtores.[27] The miniſters of Charles II. to throw the imputation of popery from their own ſhoulders, commanded, "that all offices ſhould be put into proteſtant hands:" Never reflecting, in the height of their zeal, that, while they ſhowered favours on ſome, they deprived others unjuſtly of rights, and that their orders were not only contrary to that equality which is the very eſſence of juſtice, but inconſiſtent with the ancient conſtitution and preſent laws of the province. But it was not ſo eaſy for the proprietary to defend himſelf againſt a very different charge, which, being founded in truth, involved him in conſiderable difficulty. He was accuſed of obſtructing the cuſtom-houſe officers in the collection of the parliamentary duties, which we have ſeen ſo lately impoſed. Without diſputing the authority of parliament, or claiming the revenue as his property from a clauſe of his charter, for which there was ſome foundation, he conſidered them merely as diſcouragements of the commerce of the colony; and, at the ſame time that he inſiſted, that, when the tax was paid it was unneceſſary to give a bond, obliging the merchant to carry the commodity to England or Ireland, he recriminated on the collectors, "as great knaves to the king, as diſturbers "of the trade and peace of the province."[28] They were found innocent; he was ſeverely rebuked for his erroneous conſtruction of the law, and for preventing its execution: And he was threatened with a writ of quo-warranto, "if he did not reimburſe the large ſum, of which his "majeſty's revenue had been wrongfully defrauded."[29] Charles II. complained bitterly, "that he ſhould obſtruct his ſervice, and diſcourage "the officers of the cuſtoms in the execution of their duty, after the "many favours which had been heaped upon him and his father;" and he ſtrictly commanded him, to take care, in future, "that the laws, "relating to the trade of the plantations, be duly obſerved, and that all "encouragement and aſſiſtance be given to the officers of the cuſtoms

" under his government."[30] The proprietary had lately beheld the ſcene that had been acted in England, in which, by the forfeiture of charters, the conſtitution had been ſhaken to its center: And he was too prudent to diſobey. Yet the cry, with regard to popery, did not altogether ceaſe, and the diſſatisfaction of the collectors of the parliamentary revenue continued; becauſe they did not meet with all the ſupport which they wiſhed for and expected.

The moment James II. aſcended the throne of his brother, he tranſmitted to the colonies a proclamation of that intereſting event, to be publiſhed there with the uſual ſolemnities.[31] His acceſſion was notified in Maryland, in June, 1685, with uncommon and unaffected demonſtrations of joy.[32] And loyal addreſſes were inſtantly ſent to England, felicitating that prince with real ſincerity on an event ſo pleaſing to him. The committee of plantations, during the reign of Charles II. had taken too much care to be perfectly informed of their affairs, of the tempers of their people, not to know how much they were always affected by reports from England, and how they conducted themſelves in the day of her diſtractions or proſperity. Upon the invaſions of Monmouth and Argyle, that monarch wrote to the proprietary, giving him intelligence of theſe ſignal occurrences: Aſſigning as a reaſon, that it might prevent any falſe rumours which may be ſpread among his people at that diſtance by the malicious inſinuations of ill men. He at the ſame time informed him, with marks of peculiar exultation, " that the parliament had cheerfully " granted him an aid, to be levied on the importation of ſugars and to- " bacco; which he hoped " would not be burdenſome to the inhabi- " tants of that province, as the impoſition was not laid on the planter, " but on the retailers and conſumptioners."[33] It was remarked by the diſcerning; " that the law, which was then tranſmitted, while it was " characteriſtic of that prince, was neither favourable to the colonies " nor friendly to the liberties of England."

Main, being appointed ſurveyor-general of the cuſtoms in Virginia and in Maryland, no ſooner applied to the council for a writ of aſſiſtance to the officers of the revenue, than it was granted with alacrity: And he had the juſtice to confeſs, that the province had been greatly miſ-

repreſented

represented with regard to its opposition to the acts of trade.[34] The former collectors, irritated by neglect or opposition, probably ran beyond the truth in their representations on that subject. At the same time that James II. had resolved to level the constitution of England to the ground, he determined to annihilate the proprietary governments of the colonies: Giving as a reason; "that it was of very great and growing prejudice "to his affairs in the plantations, and to the customs here, that such "independent administrations should be maintained, without more im-"mediate dependence on his crown."[35] It was in vain for the proprietary to plead; that the administration of his province had been at all times conducted conformably to his charter, and to the laws of England; that he never was informed of the pleasure of his prince, but it was always obeyed; that neither he nor his father had done any act which could incur a forfeiture of a patent, which they had dearly purchased in adding a considerable province to the empire. In April, 1687, the attorney-general received orders "to issue a writ of quo-warranto against his "charter."[36] But owing to the difficulty of the business, to the necessary length of time, to the attraction of the royal attention to more importants objects, no judgement was ever obtained. Thus that prince, with the infatuation characteristic of his later years, disregarding equally the protestant principles of New-England and the popish tenets of Maryland, involved both in the same undistinguishing project of tyranny, ruinous and degrading.

The birth of a son to James II. which gave so much cause of unhappiness to many while they doubted its reality, and which produced events so extremely interesting, was no sooner communicated by the privy-council to the proprietary, and by him to his governors, than it gave the greatest joy in Maryland. They instantly ordered a day to be set apart, to render thanks to heaven "for so inestimable a blessing."[37] And amid this festivity an assembly was soon after called. Joseph, the president, who with others then governed in the absence of the proprietary, recommended to both houses their duty to God, by providing for the due punishment of vice; their allegiance to the king, by obeying his orders, for concurring with Virginia in making a law to prevent the exportation

of tobacco in bulk, by eſtabliſhing a general anniverſary for the birth of ſo hopeful and glorious a prince; their duty to the proprietary, who deſired nothing ſo much as the general good; their care of the people, by making uſeful laws.[38] Yet the burgeſſes proved ſomewhat refractory, and it was not without conſiderable difficulty that they were prevailed on to take the oath of fidelity to the proprietary.[39] Among a variety of excellent regulations, which were then eſtabliſhed, that is extremely remarkable which was paſſed "for a perpetual commemoration and thankſ-"giving, every tenth day of June, for the birth of a prince."[40] But the legiſlature did not obey the royal requiſition on the ſubject of tobacco, becauſe the Virginians had not complied. And the deputy-governors excuſed the province, by tranſmitting the above-mentioned act; which they hoped would be taken acceptably, "as the intent was loyal."[41] The houſe of burgeſſes nevertheleſs was not forgetful of the intereſts of its conſtituents. It preſented a ſpirited repreſentation of grievances, which it then deemed the only oppreſſions of the province. And theſe were conſtitutionally redreſſed in aſſembly to "their hearts content."[42]

But neither the public felicity nor private happineſs were of long continuance, notwithſtanding this ſeeming cordiality. The cry againſt popery, which had been attended with ſuch prodigious effects in England, during the reigns of Charles II. and his ſucceſſor, was re-echoed in Maryland, where the factious made the ſame uſe of it, to promote ſimilar purpoſes of intereſt or ambition. The ſpirit of party nevertheleſs, though excited and continued by religious differences, of all others the moſt apt to ſharpen the reſentments of men, had been hitherto moderated by the liberal ſpirit of the laws, and reſtrained by the prudent adminiſtration of the proprietary. But no ſooner were the tidings of the Revolution told in that province than thoſe latent diſſenſions, inflamed by freſh incentives, blazed out into inſurrection. And thoſe, who had for ſome time waited impatiently for the ſeaſon of harveſt during the diſtraction of the times, now reaped abundantly.

When the deputy-governors were informed, in January, 1689, of the intended invaſion of England by the Dutch, they thought it prudent to put Maryland in the beſt ſtate of defence. For it was then unknown, even

to

to thoſe who were the moſt truſted, what an extraordinary uſe was to be made of that memorable atchievement. They collected the public arms that had been diſperſed in the various counties. They apprehended ſeveral perſons who were accuſed of ſpreading falſe news, to diſturb the general tranquillity.[43] But theſe meaſures, whether ſalutary or baneful, were fruſtrated, and even the whole fabric of government was blown up in a moment, when a rumour was diſſeminated, which faction framed and credulity believed, "that a popiſh adminiſtration, ſupported by Papiſts, "had leagued with Indians, to cut off the whole Proteſtants in the pro-"vince." Confuſion, diſmay, and indignation, inſtantly ſeized the people. Every art was tried to ſatisfy them of the falſehood, the folly, the abſurdity, of the report; but to no purpoſe.[44] During times of high paſſion it is natural for the human mind to credit implicitly ſtories the moſt nonſenſical and incredible. Extremely ſimilar to the popiſh plot of England, various accidents occurred, that tended wonderfully to ſupport the univerſal deluſion. Though Lord Baltimore received orders to proclaim William and Mary, which he promiſed readily to obey, yet ſome fatal accident happened to the commands which he tranſmitted to his deputies for that purpoſe:[45] They received therefore no official notice or legal orders with regard to a tranſaction, delicate and important, long after the prince and princeſs of Orange were formally proclaimed in Virginia. And they at that conjuncture concluded a treaty of peace with the neighbouring Indians, which had long been annually confirmed.[46] As always happens during times of public commotion, the very arts which the preſident and council employed to exculpate themſelves, to remove the general illuſion, to ſupport the falling government, were turned againſt them as the moſt convincing proofs of guilt. "And an aſſo-"ciation in arms, for the defence of the proteſtant religion, and for "aſſerting the right of king William and queen Mary to that province "and all the Engliſh dominions," was formed in April, 1689. The aſſociators placed at their head John Coode, who had been tried for ſeditious practices in 1681, who now found an excellent opportunity of carrying into action thoſe principles which he had before only taught. He ſeems to have been a man of utter profligacy; ſince he openly avowed a contempt

a contempt for all morality and religion. Yet, being overlooked at the ſettlement of the adminiſtration of Maryland, by William, becauſe he was deemed unworthy of truſt, he acted the ſame ſeditious part againſt the government of that monarch; and he was driven out of the province, becauſe he did not think it prudent to abide the ſentence of the law. [47] The deputies endeavoured at firſt to oppoſe the aſſociators with force; but they ſoon found that a falling government meets with few ſupporters, and they were conſtrained to deliver up the fort, with the powers of government, by capitulation: [48] And a revolution in government and in power, of great extent and duration, enſued in Maryland.

Thus were the prerogatives of the proprietary, which he had exerted with an unexampled attention to the rights of the people, the privileges of the Roman-Catholics, which they had hitherto enjoyed under the mildeſt of laws, with a moderation unparallelled in the annals of the world, overwhelmed at once by the provincial popiſh plot, and buried in the ſame grave. William approved of a revolution which ran before his wiſhes, which was ſo conſiſtent with his views; and he tranſmitted orders to thoſe, who had thus acquired power, to exerciſe it in his name, for the preſervation of peace. [49] Yet there were not wanting men, who remarked: That the ſucceſſors of that monarch might poſſibly live to regret the impolicy of countenancing a ſpirit of revolt, that in other times may ſhake the throne on which he then ſat. Happy, had the aſſociators executed the authority they now poſſeſſed, with the approbation of their ſovereign, with leſs triumph and oppreſſion [50] over men, who were fellow-ſubjects of the ſame ſtate, who were entitled to the ſame immunities, who had been guilty of no other crime than that they thought differently, perhaps abſurdly, in religion and in politics!

AUTHORITIES AND NOTES.

[1] Bacon's Laws, 1671, ch. 11. — [2] Ib. 1674, ch. 1. — [3] Ib. 1671, ch. 2; Ib. 1671, ch. 5; Ib. 1671, ch. 6; 1671, ch. 12; 1671, ch. 20.

[4] *Extract*

[4] *Extract of a letter, from the Reverend John Yeo, to the archbiſhop of Canterbury, dated the 25th of May, 1676, at Patuxent.*

" The province of Maryland is in a deplorable condition for want of an eſtabliſhed miniſtry: Here are ten or twelve counties, and in them at leaſt twenty thouſand ſouls, and but three proteſtant miniſters of the church of England. The prieſts are provided for; and the Quakers take care of thoſe that are ſpeakers; but no care is taken to build up churches in the proteſtant religion. The Lord's-day is profaned, religion is deſpiſed, and all notorious vices are committed; ſo that it is become a Sodom of uncleanneſs, and a peſt-houſe of iniquity. As the Lord Baltimore is lately gone for England, I have made bold to addreſs this to your grace, to beg that your grace would be pleaſed to ſolicit him for ſome eſtabliſhed ſupport for a proteſtant miniſtry." —— The original, with one from the archbiſhop, recommending it to the biſhop of London, is in the bundle of Maryland Pap. in Plant. Off. v. 1. The Brit. Emp. in Am. 1 v. p. 204, ſays, " there were in Maryland, in 1678, " only 16000 inhabitants." Ogilby ſays, " that it had been ſo effectu- " ally ſupplied with people and neceſſaries by Lord Baltimore, that, in " the year 1671, there were then 15, or 20,000 ſouls in it." — Hiſt. Ch. Maryland.

[5] 1674, ch. 22. — [6] 1676, ch. 1-2. — [7] 1676, ch. 16. — [8] 39 Eliz. ch. 4. — [9] Obſerv. on ancient Stat. 352. — [10] Principles of penal Law, 30. — [11] 13-14 Cha. II. ch. 1. — [12] Right to the tonnage ſtated, 20; Laws, 1676, ch. 18.

[13] The aſſembly, in the year 1682, " to demonſtrate its gratitude, " duty, and affection, to the proprietary, prayed his acceptance of " 100,000 lb. wt. of tobacco, to be levied this preſent year. He re- " turned his thanks for the kind tender, but ſaid, that, conſidering the " great charge of the province, he did not think fit to accept thereof." — Ib.

[14] Maryland Ent. vol. 1. p. 28-9; Journal, 2 v. p. 83-7. — [15] Ib. 184-6. — [16] Ib. 5 v. p. 16. — [17] 1681, ch. 3. — [18] 1678, ch. 1. — [19] 1681, ch. 1. — [20] 1681, ch. 6. — [21] 1682, ch. 5. — [22] 1683, ch. 5. — [23] 1686, ch. 4.

[24] *Extract*

[24] *Extract of a letter from Lord Baltimore, 19 July, 1681, to the Earl of Angleſey, preſident of the council.* — From the Maryland Papers, vol. 1.

" Upon theſe diſturbances, given us by the heathen rogues, [the Indians,] ſome ill-diſpoſed perſons here have been tampering to ſtir up the people of Maryland, and the north parts of Virginia, to mutiny; but, having notice of the chief contrivers of the deſign, I gave orders to apprehend Joſias Fendal and John Coode, two rank Baconiſts. The firſt of theſe was, ſome twenty years ſince, my father's lieutenant-governor here; but, upon his breach of truſt and rebellion, he eſcaped the gallows very narrowly; ſince which, and in the time of Bacon's rebellion, he endeavoured to raiſe a rebellion here, and then Maryland had been embroiled and ruined as Virginia was. The encouragement this fellow had, to lay the wicked deſign, was the hopes he had, that, upon his majeſty's meeting his parliament, there would be ſuch differences as would occaſion civil wars, and then there would be no laws in England; and ſo he and his crew might poſſeſs themſelves here of what eſtates they pleaſed." ——— The commander of a ſhip, who arrived from Maryland in October, 1681, being examined by the committee of plantations, with regard to the troubles of that province, ſaid, " That there were thirty " Proteſtants to one Papiſt, between whom there was no quarrel; but " that two perſons had been apprehended for ſaying, that, were the par- " liament diſſolved, Baltimore ſhould not be quiet in Maryland." — Journal, 3 v. p. 299. — There is the following paſſage in an affidavit of Colonel Vincent Lowe, one of the council: " That, in converſing with " Mr. Rouſby, who was collector of his majeſty's cuſtoms, and who " ſhewed him a bundle of news-books, with regard to the bill of exclu- " ſion, which Lord Hallifax was ſaid to have oppoſed, Mr. Rouſby " made anſwer, that great men were great knaves and turn-coats, and " began to p—s backward." — It is in the ſame bundle of Maryland Papers. — When ſuch a man ſaid ſuch things, we may eaſily form a judgement of the converſation of others, and thence conclude how much the politics of England then influenced thoſe of the colony. Yet it ought to be remarked, that Mr. Rouſby denied that he had ever uſed ſuch expreſſions.

[25] From

[25] From the trial at large, in the bundle of Maryland Papers, it not only appears that the proceedings were remarkably regular and fair, but that Fendal excepted againſt all Roman-Catholics as jurymen.

[26] Their trials are in the ſame bundle.

[27] There are, among the ſame papers, liſts of the council of Maryland, and of the militia-officers, ſhewing the religion of each; which juſtifies the proprietary's aſſertion. — See Maryland Papers, vol. 1. p. 56-57-65.

[28] *Extract of a letter from Lord Baltimore, 7th June, 1681, to the Earl of Angleſey, the preſident of the council.*— From Maryland Ent. 1 v. p. 46.

" I have already written twice to your lordſhip about Chriſtopher Rouſby, who I deſired might be removed from his place of collector of his majeſty's cuſtoms, he having been a great knave to the king, and a diſturber of the trade and peace of the province." —— He excuſes his conduct, as to the certificates of ſhips for ſecuring the duties. Yet Lord Baltimore, having been collector during his father's life-time, recommended Rouſby, five years before, to ſucceed him. — Ib. 67. — The board of cuſtoms reported againſt the proprietary, in favour of that gentleman. — Ib. 72. — It is remarkable, that, in the ſhort period from 1684 to 1689, no leſs than two collectors of the cuſtoms were murdered in that province; Mr. Rouſby, by Col. Talbot, one of the council, who, being carried into Virginia, was there tried and convicted, but was pardoned by James II. and Mr. Payne, by the ſervants of Mr. Sewel, one of the council, during the diſtractions of the Revolution, who, having eſcaped into Virginia, were ordered thence by William III. to Maryland, and were tried during the adminiſtration of the aſſociators, and one of them executed. — See Maryland Ent. vol. 1. 105.

[29] Journ. 3 v. p. 342.

[30] *Extract of a letter, dated the 16th of Auguſt, 1682, from Charles* II. *to Lord Baltimore.* — From Maryland Ent. 1 v. p. 80.

" We are not a little ſurprized to find that you have obſtructed our ſervice, and diſcouraged our officers in the execution of their duty; and although, by ſeveral letters, we have already directed you to be aiding to

the collector and officers of our cuſtoms in Maryland, *and particularly in the due collection of the impoſitions payable to us by act of parliament, made the twenty-fifth of our reign, whereby certain rates were impoſed, among which was one penny a pound on tobacco*; we are nevertheleſs informed, that, inſtead of your being aſſiſting to our ſaid officers in the due collection thereof, you have hindered and forbidden them to receive the ſame; and particularly that you had hindered our collector of our cuſtoms from receiving the ſaid penny per pound, due for tobacco ſent to Ireland, and that you told him that he ſhould not meddle with them, for that he had nothing to do therewith; by means whereof the ſaid ſhips went away with their cargoes of tobacco, without paying any of the ſaid duties; whereby we are damnified in our cuſtoms to the value of £. 2500 ſterling. And although your proceedings above-mentioned, in the obſtruction of our officers, and contempt of our laws, are of ſuch a nature, as that we might juſtly direct a writ of quo-warranto to be iſſued out, we have, nevertheleſs, out of our great clemency, thought fit, for the preſent, only to require the commiſſioners of our cuſtoms to charge you with the payment of the ſaid ſum, and to cauſe a demand to be made from you for the ſame. And we do ſtrictly command you, for the future, to take care that all our laws relating to the trade of our plantations be duly obſerved and executed; and that all encouragement and aſſiſtance be given to the officers of our cuſtoms under your government."

[31] Ib. 89. — [32] See a letter from Colonel Digges, giving an account of the joyful proclamation of James II. in Maryland. — Ib. 94.

[33] *Extract of a letter, dated the 26th of June, 1685, from James* II. *to Lord Baltimore.* — From Maryland Ent. 1 v. 96.

" Upon the meeting our parliament, they, for repairs of our navy, and other important occaſions, cheerfully granted to us an aid to be levied upon all tobacco and ſugar to be imported into this our kingdom, according to ſuch rates, and during ſuch time, and in manner as, by the act herewith ſent you, more fully is ſet forth. Yet the impoſition, as it is not laid on the planter or merchant, but only on the retailer, conſumptioner,

ſumptioner, or ſhop-keeper, we are well aſſured will not be burdenſome to our ſubjects under your government, but on the contrary it will be of great advantage to them, by enabling us the better to protect the navigation of this kingdom, and the trade of our plantations. —— We have thought fit to acquaint you, for the information of our ſubjects under your government, that the peace and quiet of our kingdom of Scotland has received ſome diſturbance from the traiterous practices and rebellion of the late earl of Argyle, by his landing in the weſt highlands with men and arms; but it has pleaſed God to deliver that traitor and his rebel followers into our hands; ſo that, upon ſeizing his ſhips, and arms, and materials of war, and defeating the multitude that he had gathered together, he is now ſecured in our caſtle of Edinburgh, in order to his execution; whereby the peace of that kingdom is perfectly reeſtabliſhed. —— We are likewiſe pleaſed to inform you, that the late duke of Monmouth, ſince attainted of treaſon, is, in the ſame traiterous and rebellious manner, landed in the weſtern parts of this kingdom; and, with a number of men of the loweſt degree, and many of them unarmed, has given diſquiet to thoſe parts: But, by the care we have taken in ſending thither a ſufficient number of our ſtanding forces, who are now in purſuit of him, we are expecting to hear of the total defeat of that traitor and his accomplices: And we being perfectly aſſured of the conſtant and undoubted fidelity of our nobility and gentry, we cannot fail, by the bleſſing of God, of a happy iſſue and ſucceſs in our ſaid affairs. All which we have thought fit to intimate to you, for the preventing any falſe rumours or reports, which might be ſpread amongſt our ſubjects, at that diſtance, by the malicious and traiterous inſinuations of ill men."

[34] Council-book of Maryland in Plantat. Office, p. 75-8-85. — [35] Maryland Ent. 1 v. p. 102-3. — [36] Ib. 109. — [37] Council-book of Maryland, p. 183-7.

[38] See this moſt curious ſpeech in the bundle of Maryland papers, vol. 1. It is of the length of a modern ſermon; and it is, in fact, one.

[39] Council-book of Maryland, p. 205. — [40] Laws, 1688, ch. 1.

[41] Council-book of Maryland, 206.

Articles of grievances, preſented by the houſe of delegates to the deputy-governors, in November ſeſſion, 1688.

1ſtly. Whereas it is provided, by ſeveral acts of aſſembly, that the proprietary and his receivers ſhall accept merchantable tobacco for his rents, fines on alienations reſerved upon the grants of lands, at the rate of two-pence per pound; yet his officers, contrary to law, not only refuſe tobacco, but exact ſterling money, to the oppreſſion of the people.

2dly. The ſecretary charges fees in his office, not due by law.

3dly. Proper officers have not been appointed to carry into execution the act for the advancement of trade.

4thly. As no laws can be repealed but by the aſſembly, it deſired to know, if the proprietary intended to annul a clauſe in the act for bringing tobacco to towns.

5thly. The attorney-general oppreſſes the people.

Anſwers, given by the governors in the council-chamber.

1ſtly. The tenor and true intent of the laws ſhall be purſued.

2dly. We are willing that a law, relating to officers and their fees, ſhall be made, to explain that clauſe mentioned in the ſecond aggrievance, in order to clear up doubts for the future.

3dly. We are apprehenſive, that the proprietary as well as the people are loſers thereby, and therefore ſhall write him for his inſtructions as deſired.

4thly. The proprietary does not intend to annul the clauſe mentioned without an act of repeal.

5thly. If ſuch proceedings have been practiſed, the law is open againſt

gainſt the offender, who is not countenanced by government.

6thly. Certain perſons, under a pretended authority from ſome militia officers, have preſſed proviſions in time of peace.

6thly. We know of no ſuch offenders; but, when informed of them, we ſhall proceed againſt them according to law and matter of fact.

7thly. The late adjournment of the provincial court to the laſt Tueſday in January is a time moſt incommodious for the people.

7thly. At the requeſt of the lower houſe, they will adjourn the provincial court by proclamation.

8thly. Several officers of towns have exacted 3d. a hogſhead for tobacco, though not brought thither according to law.

8thly. They referred to the act in that caſe made, and juſtice ſhall be done.

The lower houſe returned their thanks for the favourable anſwers above-mentioned; took their leave; and returned to their own houſe. — Right to the tonnage ſtated, p. 18-19: And Council-book of Maryland, p. 205.

Nevertheleſs, the following extracts, from "the declaration of the "motives for the preſent appearing in arms of their majeſties proteſtant "ſubjects in Maryland," demonſtrate, that, during the triumph of party, a multitude of other grievances was diſcovered, antecedent to thoſe which we have juſt ſeen preſented by the great inqueſt of the province, and conſtitutionally redreſſed in aſſembly. — From Maryland papers, D. N°. 1.

"Although the ſtate of affairs is ſo well known as might excuſe any apology for this preſent inevitable appearance; yet, as by the plots, and inſinuations, carried on by Lord Baltimore his officers here, the tyranny under which we groan is palliated, and the particulars of our grievances are ſhrouded from the eye of obſervation and the hand of redreſs, we thought fit, for general ſatisfaction, to publiſh this declaration. ——— 1ſt. His lordſhip's right to the government is by virtue of a charter to his father from Charles I. How his preſent lordſhip has managed the authority

rity granted, we could only lament in ſilence. — There is a reſervation in the charter of the faith due to the crown of England, (the province and inhabitants being immediately ſubject thereunto,) but how little that is manifeſted is obvious to all unbiaſſed perſons: The very owning that ſovereign power is a crime that renders us obnoxious, as ill-affected to the government: *The ill-uſages and affronts to the king's officers of the cuſtoms were a ſufficient argument of this.* Allegiance here is little talked of; except that they inſiſt, that fidelity to the proprietary is allegiance to the king. — 2d. How the *jus regale* is improved here is too ſenſibly felt by us all; in the ſeizure of our perſons and the forfeiture of our goods and inheritances. — 3d. The churches, which by the charter ſhould be conſecrated according to the eccleſiaſtical laws of England, are converted to the uſe of popiſh idolatry. — 4th. How well the power to enact laws has been executed is too notorious: His lordſhip declaring the beſt of the laws void by proclamation, though aſſented to in his name by the governor; whereby our liberty and property have become uncertain under the arbitrary diſpoſition of the judges. Nor is this ſuſpending power the only grievance that burdens us. For the moſt unjuſt laws are countenanced, as they are agreeable to the good liking of the governors: Eſpecially one that, againſt all reaſon and law, puniſhes all ſpeeches, practices againſt his lordſhip's government, that ſhall be thought mutinous by the provincial court, with whipping, boring the tongue, impriſonment, baniſhment, or death. — 5th. Exceſſive fees have been impoſed againſt law. — 6th. Impreſſing men, proviſions, &c. often to gratify private deſigns. — 7th. Seizing Proteſtants in their houſes with armed Papiſts, and detaining them long without trial. — 8th. Private murders and public outrages committed by Papiſts upon Proteſtants without redreſs, but are connived at by men in chief authority, who are governed by Jeſuits, and who are our chief judges and officers, civil and military. — 9th. When, after we had long groaned under theſe preſſures, and we expected relief from the beſt of princes, our moſt gracious king William, to our great conſternation, upon the news of the happy change in England, we found the ſtrongeſt endeavours of lord Baltimore's deputies to defeat us, and we every where heard not only public proteſtations againſt

againſt their majeſties right and poſſeſſion of the crown, but their illuſtrious perſons vilified by the moſt traiterous obloquy. — 10th. We were daily threatened with the loſs of our lives, liberties, and eſtates, by thoſe machinations that were on foot to betray us to the French and Indians; of which ſome have been dealt withal and others invited to aſſiſt in our deſtruction. — 11th. We have conſidered that all other branches of their majeſties dominions in this part of the world have done their duty in proclaiming their majeſties, and aſſerting their undoubted right in theſe and all other territories of the crown of England. — 12th. But, above all, we conſider ourſelves, during this general jubilee, diſcharged from all manner of fidelity to the chief magiſtrates here; becauſe they have departed from their allegiance, upon which alone fidelity depends, by their agents endeavouring to deprive us of our lives, properties, and liberties, which they were bound to protect."

REMARK. The foregoing hiſtory, the tranſactions of former aſſemblies, ſhew how much truth was contained in the declaration before recited. Yet ſuch were the accuſations, as frivolous as unjuſt, which the convention preſented to William and Mary as reaſons for depriving the proprietary of his rights.

[43] Council-book of Maryland, p. 190-8-210. — [44] Ib. 211-22. — [45] Maryland Ent. 1 v. p. 111-124-5. — [46] Council-book, Ib.

[47] Bacon's Laws, 1689. — Of this man, governor Nicholſon wrote the miniſters of William: "It will be an extaordinary thing when theſe "governments are without ſuch ſort of perſons as Coode; who, I think, "is a diminutive Ferguſon [the famous republican plotter] in point of "government, and a Hobbiſt, or worſe, in point of religion: It was his "maxim, that if much dirt is thrown ſome of it will ſtick." — He was indited in the year 1695, of blaſphemy againſt his God, and of treaſon againſt his king. Among other abandoned expreſſions, which juſtly gave offence to the province, he ſaid: "That there was no religion but "what was in Tully's Offices." In order to make theſe expreſſions ſtill plainer, the indictment charged: "That they were ſpoken of *one* Tully, "a Roman orator meaning." — See the proceedings againſt Coode, in the Virg. Pap. 3 v. p. 357.

[48] See

[48] See the capitulation, in the bundle of Maryl. Pa. v. 1. — [49] Maryland Ent. v. 1. p. 146-8.

[50] There are a multitude of letters and addreſſes of the inhabitants of the colony, both Proteſtants and Roman-Catholics, in the bundle of papers, v. 1. complaining of the inſult and oppreſſion of the aſſociators: But the redreſs of their wrongs was referred by William to the new governor; who, as might have been foreſeen, joined thoſe who had thus forced themſelves into power.

The declaration of the aſſociators was printed at St. Mary's, by the printer of the province. In Virginia we have ſeen no printing-preſs was allowed. In New-England and New-York there was aſſuredly none permitted. The other provinces probably were not more fortunate, becauſe they did not enjoy greater liberty. We may thence juſtly infer; that Maryland, under the mild government of the proprietary, and the rational protection of the aſſembly, of all the colonies, enjoyed the moſt genuine freedom at the æra of the Revolution, notwithſtanding the ill-founded aſſertions of thoſe who now overturned its government.

CHAP.

CHAP. XVI.

Charles II. *offended with Maſſachuſets.* — *Appoints commiſſioners to inquire into its affairs.* — *The conduct of the general-court on that occaſion.* — *Its addreſs to the king.* — *Its altercation with the commiſſioners.* — *Its real principles of action.* — *Indian war.* — *Freſh complaints againſt the colony.* — *The arts of the general-court to ſoften Charles.* — *It enforces the acts of trade by a law of its own.* — *It oppoſes the officers of the cuſtoms.* — *It appoints agents to anſwer complaints.* — *Writs of quo-warranto iſſued.* — *Reflections.* — *An arbitrary government eſtabliſhed in New-England.* — *Sir Edmond Andros's adminiſtration.* — *A revolution at Boſton.* — *Remarks.*

FROM the commencement of the reign of Charles II. the general-court never was without alarming apprehenſions of being deprived of what it deemed the well-earned privileges of the colony; becauſe its ſpies in England gave it the moſt minute though exaggerated information of every intereſting occurrence. Its former fears were conſiderably increaſed, upon receiving intelligence of the appointment of commiſſioners to inquire into the affairs of New-England; becauſe it had every thing to fear, but nothing to hope. Agreeably to its wonted practice on all important occaſions, it ordered a day of faſting and of prayer to be obſerved, to implore the divine mercy on the many diſtractions of the ſettlement. And, with peculiar jealouſy, it commanded, that the charter ſhould be brought into court, "to be kept ſafe and ſecret for "the country."[1] Thus dreading, in royal commiſſioners, ſent to regulate its government, thoſe hidden arts which itſelf had long ſucceſsfully practiſed.

From the Reſtoration to the diſſolution of its government, "that co-"lony, as we are aſſured, never ſtood well in England."[2] Its conduct, during that period, ſeems indeed to have been rather of a kind which tends to provoke reſentment than to conciliate good-will. The manner of proclaiming that prince, ſo different from that of every other dominion

of the crown, was extremely diſobliging. His requiſitions, ſo reaſonable and important, in return for pardon and oblivion, it either evaded or diſputed. Complaints, as well of individuals as of neighbouring colonies, had been made and repeated; "of differences which had ariſen "upon the boundaries of their charters and juriſdictions." And the Indian ſachems, feeling their wrongs with the ardour of untutored minds, repreſented "the breach of faith on the part of the colony, and the "acts of violence which they had undergone."[3] Charles II. having received addreſſes from the general-court, either denying or explaining thoſe complaints, declared his intention, in April, 1663, "to preſerve "its charter, but to ſend commiſſioners thither to ſee how it was ob-"ſerved by that body."[4] Yet it was not till the ſubſequent year that a meaſure ſo fruitful of events was fully executed. "Upon theſe motives, "and to the end that we may be truly informed of the condition of our "ſubjects there," that monarch, in April, 1664, iſſued a commiſſion; empowering Richard Nichols[5] and three others "to hear and determine "complaints and appeals in cauſes, as well military and civil as crimi-"nal, within New-England, and to proceed in all things for ſettling the "peace and ſecurity of the country."[6] Intelligence of this appointment, and of ſeveral ſhips "of war that were coming from England," was ſoon received at Boſton. And the general-court made preparations to receive them "with that prudent precaution" as if it had expected the hoſtile invaſion of a foreign enemy.[7] The conduct of both parties ſhewed the ſenſe that each entertained of the other.

The commiſſioners no ſooner arrived than they laid before the council their commiſſion, and an inſtruction, requiring aſſiſtance for the reduction of New-Netherlands. But that body, with a caution bordering on timidity, adviſed that the whole ſhould be ſubmitted to the general-court, which was ſoon to meet. And the commiſſioners proceeded in the mean time againſt the Dutch colony. That aſſembly immediately reſolved, in words which ſhew what impreſſion the arrival of the royal officers had made; "to bear true allegiance to his majeſty, and to adhere to a patent, "ſo dearly obtained and ſo long enjoyed by undoubted right."[8] It went a ſtep farther now, however, than it had done upon the requiſition of Cromwell

Cromwell on a ſimilar occaſion: It raiſed two hundred men for the king's ſervice, though they did not join the expedition, becauſe it had been crowned with ſucceſs before they were embodied: And it complied with the former requiſition of Charles, as to the admiſſion of freemen. In conformity to its accuſtomed policy, it tranſmitted, in October, 1664, an addreſs to that prince, which was received with the ſame ſincerity as it was probably intended: It profeſſed the ſubjection of the coloniſts, and their willingneſs to teſtify their duty in any righteous way: It complained feelingly of "the miſinformations of adverſaries," whoſe conſtant ſolicitations had procured a commiſſion, ſubjecting them to the arbitrary power of ſtrangers: It ſtated the grievances of the colony with the force of men who feared that the power of the commiſſioners might be improved "to the ſubverſion of their all:" And it concluded in this rapturous ſtrain: "Let our government live, our patent live, our "magiſtrates live, our laws and liberties live, our religious enjoyments "live, ſo ſhall we all yet have farther cauſe to ſay, from our hearts, let "the king live for ever"[9] Letters, ſuing for favour, were at the ſame time tranſmitted to ſeveral of the Engliſh nobility. For, thus early did that practice commence, which has been conſiderably extended and improved in modern times. And, on that occaſion, was not forgotten the lord-chancellor Clarendon, whoſe good opinion was deemed of the greateſt importance.

Notwithſtanding all theſe arts, the application of the general-court did not prove as ſucceſsful as was fondly expected. Charles II. while he was extremely diſpleaſed with the petition, affected to conſider it as "the contrivance of a few perſons, who infuſe jealouſies into his ſubjects, "as if their charter were in danger." Secretary Morrice tranſmitted his anſwer in February, 1665: Blaming the general-court for making unreaſonable and groundleſs complaints; juſtifying the commiſſion as the only way in which he could proceed upon ſo many complaints preſented to him of injuſtice done: And aſſuring the general-court of the full enjoyment of the privileges granted by the charter, which he was ready to renew. The anſwer of the chancellor was equally unfavourable to the views of that body. "We were all amazed, ſaid he, that you ſhould "demand a revocation of the commiſſion, without laying the leaſt charge

" of crime or miſmanagement againſt the commiſſioners: You had long " cauſe to expect ſuch a meaſure, which was become abſolutely neceſ- " ſary, to compoſe the differences among yourſelves, of which his ma- " jeſty had received complaint; and to do juſtice to your neighbours, " which they demanded at his royal hands. I know not what you mean " by ſaying, that the commiſſioners have power to exerciſe government " inconſiſtent with your patent and privileges; ſince I am ſure, the " commiſſion is to provide for the due obſervation of it, and that the " immunities granted may be equally enjoyed by all the ſubjects there." [10]

How different were the opinions of the general-court and of that illuſtrious ſtateſman with regard to the genuine conſtruction of the writing complained of: Perhaps the extreme jealouſy of the former enabled it to ſee farther than even the great abilities of the latter. The proceedings of both ſhew the views of both. It appeared to him that the governments of New-England were in the greateſt diſorder, and required regulation. The general-court conſidered the leaſt infringement of thoſe forms that had been eſtabliſhed, however contrary to the letter or intention of the patent, as an attack on the chartered rights of the colony. The truth lay as uſual in the middle between both. No grant, no uſage, however ancient or inveterate, could exclude a king of England from the power of executing the general laws of the ſtate within the dominions of the ſtate. But that commiſſion was liable to great objection; becauſe it might have been extended to affect Engliſh liberties, which no prerogative of the crown can abridge. And an act of parliament was aſſuredly neceſſary, in order to cut up effectually thoſe principles of independence that had rooted with the ſettlement of New-England; and, during the preſent reign, produced fruits abundant and pernicious. But, from the commencement of the colonies to the preſent times, palliatives ſeem to have been generally applied to diſorders which required effectual remedies.

When the commiſſioners returned from the reduction of the Dutch colony, invigorated by their ſucceſs, they began, in April, 1665, to execute the important truſt repoſed in them. The governor having communicated their commiſſion and a variety of inſtructions to the general-court, it immediately ſent an anſwer, which tended to ſhew that it had already

already done moſt of the things required, and was willing to comply in others. The commiſſioners, pleaſed with this ſeeming cordiality, replied in ſubſtance, that they would not aggravate former neglects, but hoped that the general-court, by "practical aſſertions" of duty, would give his majeſty ſatisfaction upon the points contained in his letter of 1662, which had ſo long ſlept. While the one ſide was buoyed up by the vanity of power and of prejudice, and the other was actuated by an extreme jealouſy of endangered rights, we ought not to wonder that ſuch a conference ſhould degenerate ſoon into altercation. The commiſſioners at length peremptorily aſked that body; "do you acknowledge the royal "commiſſion to be of full force to all the purpoſes contained in it?" But, to a queſtion at once ſo deciſive and embarraſſing, the general-court excuſed itſelf from giving a direct anſwer, and choſe rather "to "plead his majeſty's charter." The commiſſioners, however, attempting to hear a complaint againſt the governor and company, the general-court, with a characteriſtic vigour, publiſhed, by ſound of trumpet, its diſapprobation of this proceeding, and prohibited every one from abetting a conduct ſo inconſiſtent with their duty to God and their allegiance to the king. And, in May, 1665, the commiſſioners determined "to loſe "no more labour upon men, who miſconſtrued all their endeavours, and "oppoſed the royal authority." They ſoon after departed; threatening their opponents "with the puniſhment which ſo many concerned "in the late rebellion had met with in England."

In Connecticut, Rhode-Iſland, and New-Plymouth, the commiſſioners met with a ſucceſs equal to their expectations; becauſe theſe colonies were conſcious of their own weakneſs, and hoped for protection againſt the encroachments and violences of Maſſachuſets. They endeavoured, though with better intentions than ſucceſs, to decide the controverſy which had ſo long exiſted between Maſſachuſets on the one ſide, and Maſon and Gorges on the other, with regard to the boundaries, the right to the juriſdiction and the ſoil of New-Hampſhire and Main. They eſtabliſhed a royal government in each, by appointing juſtices, in the king's name, for the preſervation of peace. They gave a kind of poſſeſſion to thoſe claimants. But they had no ſooner retired than the general-court re-eſtabliſhed

re-eſtabliſhed its former authority, though not without ſome difficulty and violence." That body, by perſecuting about the ſame time ſeveral perſons for their religious ſcruples, added authenticity and force to the repreſentations of thoſe who had been ſent to watch over its conduct, and to correct its errors.

Charles, being at length fully informed of all thoſe tranſactions, both by the commiſſioners and the general-court, was greatly ſatisfied with the conduct of all the colonies, "except only that of Maſſachuſets." It did not eſcape his ſagacity, that, notwithſtanding many expreſſions of great affection, that jealous body "deemed his commiſſion an apparent "violation of its patent, and believed that he had no juriſdiction over it." "Upon due conſideration of the whole matter," that monarch was pleaſed, in April, 1666, to recal the commiſſioners, to the end that he might receive a particular account of the condition of New-England."[13] He at the ſame time commanded the general-court to ſend agents to hear and to anſwer the complaints againſt it; and mean-while to make no change in the government of Main, as eſtabliſhed by the commiſſioners; nor alteration in the boundaries of New-Plymouth and Rhode-Iſland, as ſet by them; till cauſe ſhould be ſeen to reverſe the ſame. When the letter of recal was delivered by one of the commiſſioners, the general-court, with an uncommon ſtrain of diſſimulation, doubted its genuineneſs.[14] Reports were ſcattered among the vulgar, "that it was neither "known to, nor owned by, his majeſty." It was vain for the commiſſioners to inſiſt that it was a "real original, which ought to be received "as authentic, and was ſo entertained in all the other colonies of New-"England:" They proteſted againſt the extraordinary proceedings of their opponents on that occaſion to no purpoſe. For, with their accuſtomed dexterity, they excuſed themſelves from ſending agents to England, as had been required, giving this ſingular reaſon; "that the ableſt of the inhabi-"tants could not declare their cauſe more fully than it had been already "done."[15] Thus a commiſſion, which was ſo well intended by that prince, and from which he ardently expected the moſt beneficial effects, in a great meaſure proved fruitleſs; partly from the jealouſy of the coloniſts and the oppoſition of ancient forms, but more from the real diffi-

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culty of the buſineſs, to which nothing was equal, except the wiſdom and authority of an Engliſh parliament. And this event, ſo contrary to his expectation and his views, ſunk deep into his mind, and made an impreſſion as ſtrong as it proved laſting. He determined to bring back that government to its firſt principles.

It is not in open profeſſions, or in official addreſſes, that we ought to ſearch for the true cauſes of human actions; but in private and confidential writings, compared with a long courſe of conduct in a variety of ſituations. From this unerring ſource we may trace the real ſentiments of the leading men of Maſſachuſets on the nature of their government and connexion with the parent ſtate, which ſufficiently explains the genuine motives of their proceedings, from the epoch of their emigration to the preſent times. They conſidered civil ſubjection as either neceſſary or voluntary: The former, ariſing from actual reſidence within any juriſdiction, created an obligation to ſubmit to its authority; in the ſame manner as every alien, who reſides in England, owes a temporary allegiance to the king, and obedience to the laws: The latter proceeded from ſpecial compact: But the mere circumſtance of birth they deemed no neceſſary cauſe of allegiance; and they thence inferred, that the ſubjects of all ſtates might remove to a different country whenever they pleaſed, whoſe removal diſcharged all former connexion. From this reaſoning, ſo repugnant to univerſal juriſprudence, becauſe contrary to the repoſe and exiſtence of nations, they deduced this practical principle of independence; "that they no longer owed any allegiance to the crown, or any "obedience to the laws of the ſtate from which they had emigrated with "its conſent." Their charter, nevertheleſs, they deemed a compact, whence voluntary ſubjection aroſe; and by this teſt, to which they always appealed, they inſiſted the nature and the extent of their obedience ought to be determined. But, though no natural allegiance was due, they thought themſelves bound by their patent to ſubject the colony to no other ſovereign, to make no laws contrary to thoſe of England; but that they were to be governed alone by regulations eſtabliſhed, and by officers elected by themſelves. The conſiderable innovations, which we have remarked, they did not regard, therefore, as any breach

of

of contract on their ſide. And when Engliſhmen emigrated to Maſſachuſets, a neceſſary ſubjection to that commonwealth was ſuppoſed to commence, and they were deemed no longer Engliſh ſubjects, who carried with them the laws of England, and who in return owed obedience to them, and allegiance to the crown.[16] Though principles ſomewhat diſſimilar, or rather concluſions altogether different, have been generally avowed, yet ſuch were the reaſonings on which the government of that colony has invariably acted: And they have been adopted and improved, in the preſent age, by a genuine ſon of independence, whoſe name has added conſideration to what his eloquence has adorned.[17]

A trivial tranſaction, which occurred in the year 1668, throws additional light on the nature of the peculiar maxims of Maſſachuſets. A printing-preſs having been erected at Cambridge as early as 1638, licenſers were immediately appointed by the government, who were authorized to prohibit any publication which ſhould not be ſuperviſed by them. And a licence being now obtained for the well-known book of Thomas-à-Kempis, the general-court was inſtantly alarmed. It recommended to the licenſers a more full reviſal, and ordered the preſs in the mean time to ſtop; giving for a reaſon, "that it, being written by a "popiſh miniſter, contained things leſs ſafe to be infuſed among the "people."[18] Men of diſcernment remarked, "that the moſt rigid of "Proteſtants now adopted, without ſcruple, the ſame principles which "they had formerly abhorred and oppoſed in Papiſts, as equally con-"trary to reaſon and ſcripture." It is not under forms the moſt popular, where that invaluable privilege, *the liberty of the preſs*, is enjoyed in the greateſt perfection; but in Great-Britain alone, and in no other government, either republican or monarchical; in Holland or Venice, any more than in France or Spain. The reaſon of a peculiarity ſo happy and beneficial is derived, as we are aſſured by an admirable philoſopher,[19] from the nature of the Britiſh conſtitution; where all diſcretionary powers are removed, and every man's life or fortune is ſecured by inflexible laws; where a watchful jealouſy is conſtantly kept up, in order to prevent the introduction of that arbitrary ſyſtem which might ſteal in, were not its advances carefully attended to, and the alarm conſtantly ſpread.

ſpread. But, in republican governments, ſuch as Holland or Maſſachuſets, where there is no magiſtrate ſo eminent as to give jealouſy to the people, there is leſs danger of entruſting them with diſcretionary powers; and though advantages may reſult from ſuch authority, yet mens actions are conſiderably reſtrained, and every citizen is obliged to pay a great reſpect to the government: So that freedom of writing can neither be permitted, nor liberty of printing allowed.

Nothing ever contributed more to promote the commerce and ſecurity of New-England than the conqueſt of Acadie by Cromwell: Nothing can ſhew more clearly how much the French felt the loſs of it than their extreme ſolicitude to regain what his vigour had acquired, and his prudence retained. Baffled at the treaty of Weſtminſter, in 1655, their ambaſſadors were continually employed, from the Reſtoration to the peace of Breda in 1667, in negotiating the reſtitution of that country; but to no purpoſe. The miniſters of England either denied the validity of their right, or found means to elude the force of their requiſitions. And it was not till February, 1668, that, in conſideration of the ceſſion of part of St. Chriſtopher's, and other iſlands in the Weſt-Indies that might be taken, Charles reſtored, to France, Acadie, generally without ſpecification of limits, and particularly Pentagoet, St. John, Port-Royal, La Have, and Cape Sable, lying within it. But Temple, the proprietary of Nova-Scotia, by virtue of Cromwell's charter, heſitated to deliver up theſe fortifications in purſuance of his orders: And the inhabitants of Maſſachuſets, fearing the loſs of their commerce, their fiſhery, the ſecurity of their borders, ſent agents to England, to remonſtrate againſt what they dreaded as the greateſt misfortune; but in vain: The influence of the French proved too powerful for the intereſt of the people. And a definitive order was tranſmitted, in Auguſt, 1669, to deliver up Acadie, according to the letter of the agreement; which was effectually obeyed in the ſubſequent year. Thus the French once more acquired poſſeſſion of that moſt ancient colony: The plantations and England often found occaſion in future to regret the admiſſion of a neighbour reſtleſs and litigious, who for years exerted her peculiar arts of intrigue, to interrupt their purſuits, and to diſturb their repoſe.[10]

No tranſaction ever diſturbed the quiet of Maſſachuſets more than did at all times the claims of Gorges and Maſon to certain territories ſituated upon its northern boundary. Conſiderable parcels of New-England, which lay to the northward of the rivers Merrimack and Piſcattaway, had been granted, during the reign of Charles I. by the names of New-Hampſhire and Main: But, though large ſums of money were expended in tranſporting planters thither, partly owing to the commencement of the civil wars, but more to the intrigues of the general-court, which formed pretenſions to thoſe countries, the proprietors ſeem never to have eſtabliſhed any effectual colony or permanent government. That body, "thinking it the duty of good goverors to am-"plify juriſdiction," about the year 1652 inquired minutely into the extent of the boundaries of its grant. After tracing the former river far weſtward into the country, it was diſcovered to run from the North, and, mounting its ſtream, the ſurveyors at laſt pitched their inſtruments three Engliſh miles to the northward of its ſource; they thence marked a due Eaſt track to the ocean: And here they found themſelves upwards of ſixty miles to the northward of the place where that mighty ſtream met the Atlantic. From this ſurvey the general-court, always forward to make conſtructions favourable to its views, inferred; that the whole of the intervenient territory lay within its juriſdiction. Plauſibly arguing, that, as the patent had granted all the lands ſituated within the ſpace of three Engliſh miles to the northward of that river, and of the moſt northerly part of it, the whole tract included in the menſuration before-mentioned belonged to Maſſachuſets. The intention of the original conveyance of the Plymouth-company, and of the confirmation of the crown, were extremely manifeſt: The rivers of Charles and Merrimack were deſigned to be the boundaries of the colony on the South and North; but that it might derive every benefit from them, and be fully included within its juriſdiction, a tract of three miles along their banks was thrown in. Had the controverſy ariſen between the Plymouth-company, the grantors, and the original purchaſers, there could have been little foundation for diſpute. For the pretenſion would have appeared very extraordinary, that, becauſe the one party had granted lands of the breadth

of

of ſixteen miles, the other ſhould add ſixty more by a forced conſtruction of the deed. The general-court, however, being no longer under any reſtraint, naturally decided every doubt in its own favour; it annexed the diſputed country to Maſſachuſets: And it ruled the inhabitants by the ſame ſyſtem of laws that it had eſtabliſhed for itſelf.

The reiterated complaints of the grandſons of Gorges and of Maſon, ſubſequent to the Reſtoration, being a principal cauſe of ſending commiſſioners to New-England, they reſtored them to their poſſeſſions. But all the anarchy of conteſted authority inſtantly enſued. And though Charles had expreſſly commanded, "that there might be no alteration, "with reference to what the commiſſioners had done, till he ſhould "farther determine," yet the general-court, judging it meet, as in duty "it ſtood bound to God and his majeſty, again to exert its power of "juriſdiction," re-eſtabliſhed, in July, 1668, its former authority over that country, though not without oppoſition.[21] Againſt this ungracious conduct former complaints were reiterated. But neither the exhortations nor orders of that prince were ſufficient for ſome time to induce that body to ſend agents to England, to defend its proceedings or to explain its pretenſions: It excuſed itſelf, by ſaying, rather in the language of contempt than of juſt attention, "that the colony was too poor to em-"ploy agents, and had no meet inſtruments."[22] Wearied with the inceſſant application of the oppreſſed, the common ſovereign of both at length reſolved to give judgement againſt the general-court, even in its abſence, if it ſhould perſiſt in a line of conduct ſo inconſiſtent with juſtice and with proper regard to his authority. Edward Randolph, a ſpecial meſſenger, was ſent to Boſton to give formal notice of this ſpirited determination: Aſſigning a reaſon, which ſhews the ſtate of his mind; "that he may be no longer tired with the complaints of his ſubjects, "but may do them juſtice."[23] This appearance of deciſiveneſs had the ſame effects then which it always has, and convinced Maſſachuſets that he was now really in earneſt. Its emiſſaries, in England, had given conſtant information of the various proceedings with regard to this perplexing buſineſs; and, on that occaſion, forewarned it of the danger;

and adviſed; "that ſome preſents, and yet of no great value, might be "placed to the country's advantage."

Inſtructed by all theſe notices, and impreſſed with a ſenſe of the preſent emergency, the governor inſtantly convened a general-conrt. The elders, who, in this as in the Jewiſh commonwealth, were generally conſulted on all extraordinary affairs, were invited to attend: And to them this queſtion was propoſed; whether to anſwer theſe complaints by ſending attornies, or by writing. They adviſed the appointment of agents, "provided their inſtructions were qualified with the utmoſt care "and caution, by which they might negotiate that affair with ſafety to "the country and duty to the king." Stoughton and Bulkley were accordingly ſoon after ſent. And the general-court excuſed its former dilatory conduct, by obſerving; "that it did not eſtabliſh that government, which "it claimed from its patent, by force, but by the conſent and ſolicita-"tion of the inhabitants, nor was it afraid to ſubmit to a juſt determi-"nation."[24]

When all parties, at length, appeared in July, 1677, before the two chief-juſtices, to whom this tedious controverſy was referred, ancient pretenſions ſeemed to vaniſh before their ſagacity. The general-court, ſeeing that its claims could not be ſupported, and fearing for the fate of its charter, diſclaimed, with a provoking facility, after ſo much expence and delay, any title to the lands in controverſy. Maſon, being convinced by his counſel, that no juriſdiction could be transferred by the Plymouth-company, under whom he claimed, waved all pretence of government over New-Hampſhire. And the ſoil, being poſſeſſed by perſons who were not then preſent to defend their rights, it was deemed improper to judge of a title which had not been defended. With regard to the boundaries of Maſſachuſets the judges decided; "that they cannot be "conſtrued to extend farther northward, along the river Merrimack, "than three Engliſh miles beyond it."[25] And Main was adjudged to Gorges. All parties being again heard before the committee of plantations, and alledging nothing material againſt a determination which was dictated by good ſenſe and juſtice, the judgement was confirmed, and all parties were ordered to acquieſce.[26]

Yet,

Yet, an adjudication, ſo rational and ſatisfactory, only ſowed the ſeeds of future diſcord, which produced abundantly. While Charles, before the complaints above-mentioned were fully adjuſted, was in treaty with Gorges in order to acquire his intereſt, the general-court ſlily purchaſed his title. Mortified and offended beyond meaſure, that monarch, "though willing to forget paſt errors and miſtakes, required it to give "up the purchaſe, and to return the writings, upon being reimburſed "the price."[27] But that body, at the ſame time that it juſtified this diſingenuous tranſaction, by remarking, "that it was done at the deſire "of the inhabitants, and in favour to them," ſilently declined to comply.[28] And, by thus inflaming his reſentments, at the expence of character, it only added force to a reſolution which he had already taken. It now conſidered itſelf as ſtanding exactly in the place of the original proprietary, and as lord of Main, inveſted with all the prerogatives conferred by his patent. It at the ſame time perceived a neceſſity for a different adminiſtration over that colony than it had formerly exerciſed. And it appointed the deputy-governor, as preſident of Main, to rule it with a delegated ſway. Yet the inhabitants never cordially ſubmitted. While they were conſidered as entitled to the ſame privileges, and were governed in the ſame manner as Maſſachuſets, "they were well content." But, to be degraded thus from a ſtate of equality, and reduced to the condition of a ſubordinate territory, both mortified their pride, and deprived them of rights. They reaſoned: "That though that colony itſelf was a free ſtate, yet "this was no ſecurity to others, that they ſhould be leſs arbitrarily ruled "than when a ſingle perſon was the proprietary." Nor were theſe apprehenſions altogether groundleſs. "Charles had heard, in the year "1679, of the effects of a ſevere hand laid by the general-court on his "ſubjects there." And, in Auguſt, 1680, the deputy-governor ſailed from Boſton with two tranſports, and ſixty ſoldiers on-board, "to ſtill "the people of Caſco-Bay."[29] Thus was that body as prompt to ſupport its authority, or pretenſions, by the ſword, as it was ſlow to do that juſtice to others which it was clamorous to obtain. Philoſophic ſpirits remarked: "That the conduct[30] of the ancient republics, with regard "to their dependent territories, ought alone to teach this leſſon of cau-

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" tion to mankind, that it is not the colonies of democratic or popular " ſtates which are generally the moſt happy and free; becauſe their in- " habitants are conſidered as the ſubjects of the people."

During forty years had Maſſachuſets and its neighbours enjoyed a ſeaſon of profound peace, which they prudently employed in ſubduing the woodlands and in planting their ſettlements around. The moſt ancient emigrants had now finiſhed their pilgrimage, and ſlept with their fathers: They departed; lamenting, with their laſt breath, that they had been born too ſoon to ſee New-England in its zenith.[31] The aborigines had beheld its beginning, its progreſs, and they now began to dread its maturity. During its infant ſtate, the coloniſts had cultivated the goodwill of the natives with a humanity equal to its prudence. And the tribes, as early as 1621, had acknowledged themſelves to be the ſubjects of the crown of England. But, by this and ſimilar tranſactions, they probably intended nothing more than to be ranked among the brothers of the Engliſh, with whom they wiſhed at all times to ſmoke the pipe of peace. Though they continued to reſide and to hunt within the boundaries of the colonies, they remained perfectly independent, and owned no obedience to the various juriſdictions which were eſtabliſhed. But they decreaſed continually in numbers and in power, as the extent of their hunting-grounds was narrowed by gifts, or ſales, or perhaps encroachments. Sachem Philip, a deſcendant of the famous Maſſaſoet, at length aroſe, who had ſagacity to perceive the intereſt of the Indians, and ſpirit to reſent what he deemed their wrongs. And a war commenced in the year 1674, which had well nigh laid the glories of New-England for ever in the duſt.[32] The cauſe of that deſtructive evil has been variouſly reported. The coloniſts have diſcovered its origin in the ambition and perfidy of Philip: The hiſtorian of that chief would trace its ſource, perhaps with greater probability, to the continued invaſions of the planters, to their attempts to ſubject an independent people to municipal laws, which were as unintelligible to them as they were inapplicable, and to the patriotic efforts of that gallant ſachem to reſcue his country from impending ſlavery. After raging furiouſly for ſome time, the war was at length finiſhed by a peace, which was ſealed with the death

of

of Philip, in the year 1677. A devaſtation of three thouſand Indians is ſaid to have almoſt annihilated the tribes within the boundaries of the four colonies which had been engaged in the war. If the loſs of lives to that country was conſiderable, the deſtruction of property was calculated at 250,000l. While the provincials demanded no aid from England, they refuſed the proffered aſſiſtance of New-York. And, at the ſame time that their friends in the parent country deplored their misfortunes, there were not wanting others who converted their diſtreſſes into crimes. Theſe repreſented: "That the obſtinacy or parſimony of the ruling men of New-"England would aſſuredly deprive England of an important territory, "which they affected to conſider as independent, by declining to apply "for effectual aſſiſtance."[33] The devout among themſelves remarked, that, though they were delivered from the hands of their enemies, the judgements of God ſeemed ſtill to purſue them. In order, therefore, to examine the ſtate of religion, and to prevent the farther growth of profaneneſs, the general-court called a ſynod of all the churches. It agreed, as might have been expected, "that there was not only a great decay "of piety among the inhabitants, but that pride, intemperance, ſab-"bath-breaking, and covetouſneſs, were at an uncommon height." And it adviſed, what had then the deciſive effect of commands, that the miniſters ought to preach, and the magiſtrates to put the laws in execution, againſt vices, as abominable as they were unchriſtian. Among other ſins, which were ſaid to have brought on the Indian war as a chaſtiſement, the toleration of the Quakers was deemed a principal one: And now, in oppoſition to the requiſition of its ſovereign, contrary to the advice of its beſt friends in England, the general-court paſſed a new ordinance; requiring conſtables to apprehend officially all perſons found at a Quaker meeting, and to commit them to the houſe of correction. Both the perſecutors and perſecuted, who were now equally pitied by the humane, lived to enjoy real liberty under a form of government altogether arbitrary; which the former regarded as a curſe, becauſe it deprived them of the power of tyrannizing over fellow-ſubjects entitled to equal conſideration; which the other deemed the greateſt of bleſſings, becauſe they enjoyed under it genuine freedom.[34]

Notwithſtanding

Notwithſtanding the infelicities we have remarked, hiſtorians are confirmed by the evidence of records when they aſſert, "that Maſſachuſets, "from the Reſtoration to the preſent time, made a greater figure than "it ever did at any other time."[35] It continued to act, as it had always done, as an independent ſtate.[36] "Its trade, as we are aſſured, "was as extenſive as it could wiſh." The acts of navigation were not enforced by the governor, who was annually choſen by a people, "whoſe "intereſt it was that they ſhould not be obſerved:" No cuſtom-houſe was conſequently eſtabliſhed. It carried on the greater part of the trade of the plantations to every quarter of the globe, and its ſhips viſited every port in queſt of gain. Veſſels from every European country, as well from France and Spain as from Holland and Italy, were ſeen in the port of Boſton.[37] And, as the commercial ſpirit pervaded the whole, wealth poured out her bleſſings on the colony in abundant ſtreams.

But a ſcene of troubles now enſued, which cloſed only with the diſſolution of its ancient government, and the loſs of its original liberties. Amid the variety of daily complaints againſt Maſſachuſets, whether of individuals, of neighbouring colonies, or of the Indian ſachems, none made ſo deep or laſting an impreſſion as thoſe of the merchants and manufacturers of England. To Charles II. in the beginning of the year 1675, they repreſented, and complained with their uſual ſpirit: That the inhabitants of New-England, diſregarding the acts of navigation, not only traded to moſt parts of Europe, but encouraged foreigners to go thither and traffic with them; that they ſupplied the other plantations with thoſe foreign productions, which ought only to be ſent from England; that, having thus made New-England the great ſtaple of the colonies, the navigation of the kingdom was greatly prejudiced, the national revenues were impaired, the people were extremely impoveriſhed; that ſuch abuſes, at the ſame time that they will entirely deſtroy the trade of England, will leave no ſort of dependence from that country to this. They prayed, that the ſubjects of New-England might be compelled to trade according to law, and that the colonies might receive no ſupplies but from England, as good policy dictated, and the laws required. They were ſolemnly heard in ſupport of the truth of their complaints,

plaints, and the juſtneſs of their reaſonings. And the committee of plantations, after a conſideration equal to the importance of the ſubject, at length reſolved, that there ſhould be no retroſpect; but, in order to prevent the like abuſes in future, proper perſons ought to be appointed to adminiſter the oaths to the governors, obliging them to execute the laws of trade; that officers ſhould be ſettled in New-England, as in other places, to receive *the duties*, and to tranſmit the bonds which acts of parliament required; that, in caſe of refuſal to admit the officers, the other plantations ſhould be forbidden to allow the people of New-England any intercourſe of trade. But the moſt important and effectual of all was their concluding reſolution, which by anticipation deprived a future miniſter of the praiſe or the demerit of carrying into execution a ſimilar meaſure: They determined, "that captains of his majeſty's fri-"gates ſhould have inſtructions to ſeize and bring in offenders that a-"voided to make their entries in England." Of theſe proceedings, which ſhew the ſentiments and the practice of all parties during thoſe days, the general-court was faithfully informed by its emiſſaries; who gave warning "how any offence of this kind ſhould be given, leſt a "little profit to particular perſons ſhould occaſion to the whole the loſs "of their chiefeſt enjoyments." [38]

Thoſe reſolutions, nevertheleſs, equally prudent and deciſive, were not at that time put in practice with a vigour and perſeverance in proportion to what the proſperity of the national commerce, and the ſupport of the authority of the laws, required. The councils of Charles, like thoſe of his ſucceſſors, were either divided or diſtracted by a variety of more intereſting objects. Partly owing to the arts of his enemies, but more to his own imprudence and arbitrary adminiſtration, that monarch, towards the concluſion of the ſecond Dutch war, which all parties in England condemned, wholly loſt the popularity that he had enjoyed ſince the Reſtoration, though he tried every winning art to regain it. A jealouſy of popery and other cauſes diſſeminated a diſcontent through the nation, which his moſt ſtrenuous exertions could not prevent from producing the bittereſt fruits. From that unfortunate epoch there exiſted a continued contention, for ſeveral years, between that prince and the commons,

whom in the courſe of two years he four times in anger diſſolved.[39] Governed by leaders whom the money of France[40] had gained to its intereſts, they were too much engaged in domeſtic faction to find leiſure to attend to colonial affairs. He and his miniſters, anxiouſly employed in warding off the attacks of their opponents, which were directed by the councils of a foreign power unfriendly to England, were little able, for ſome years, to extend their undivided aims beyond the Atlantic. The ruling men of Maſſachuſets, whoſe firſt leſſons were received in the ſchool of civil commotion, and whoſe education was finiſhed in the court of Cromwell, were in the mean time neither ignorant of the affairs of England, becauſe they received, from a variety of hands, the moſt minute information, nor unſkilful in turning its diſtractions to the promotion of their own views. They for years found reſources in their own talents or in the embarraſſments of that monarch, either to elude or to delay a compliance with his repeated requeſts or commands. And the proſpect of a civil war in England, from the diſputes with regard to the famous bill of excluſion, or the final triumph of Charles over all his opponents, either confirmed their obſtinacy or ſoftened the ſpirit of their deliberations into compliance.[41]

Notwithſtanding the reiterated complaints of the merchants and manufacturers, and the breaches of the acts of trade, were ſufficiently apparent from a variety of evidence; yet, of all the reſolutions beforementioned, little more ſeems to have been done than to write to the governors of the colonies, in April, 1676, commanding them to enforce a ſtrict obedience to the laws: And commiſſions were at the ſame time tranſmitted, empowering proper perſons to adminiſter to them the oath, which had been framed for binding all by the moſt ſacred of ties, to perform what had been given them in charge. To add weight to theſe meaſures, it was determined, "that no Mediterranean paſſes ſhould be "granted to New-England, to protect its veſſels againſt the Turks, till "it is ſeen what dependence it will acknowledge on his majeſty, or whe-"ther his cuſtom-houſe officers are received as in other colonies."[42] Yet Charles, ſtill embarraſſed at home, and fearful of contradiction and diſreſpect from the general-court, under pretext of infringements of its charter,

charter, hesitated long, and determined to proceed upon the best information, before he adopted that plan of "general reformation of the "abuses in the government of Massachusets, which he had finally re- "solved on, so as to reduce it to the same dependence as the other co- "lonies." That prince merits as much commendation for his perseverance of spirit, in reducing every dominion of the crown to obedience to the laws, as some parts of his conduct of a very different tendency deserve the greatest blame.

Edward Randolph was dispatched in the beginning of the year 1676, as well to convey that monarch's letter to the general-court, which enjoined it to send agents to England fully instructed to answer complaints, as to inquire minutely into the state of the country, of its government and laws. This person, so noted in the annals of New-England, during the reign of Charles and his successor, was characterised, by the colonists, as one "who went up and down seeking to devour them."[43] He made no less than eight voyages thither in nine years, either to procure intelligence, to execute the offices with which he was intrusted, or to notify the writs of quo-warranto, which laid the fabric of independence in ruins. He had studied thoroughly their history, their jurisprudence, their manners; and his accounts of those colonies are by far the most intelligent, decisive, and satisfactory. The arrival of a special messenger, who was "ordered to hear read the royal commands in full coun- "cil,"[44] determined the general-court, after great advice, to comply. It sent agents, but with instructions "drawn with the utmost caution, "for the preservation of its patent liberties."[45] Though they concurred in the settlement of the tedious controversy with Mason and Gorges, which we have seen was decided against the colony; yet, when they were examined by the committee of plantations, with regard to the extent of their authority, they said, that they had no other power than to defend the claims of these men, but were not authorised to answer any other question than as private men.[46] Nothing could be more dissatisfactory, or contrary to expectation, than the coldness and reserve of this declaration. They were told, in language which sufficiently spoke disappointment and chagrin: "That his majesty did not think of treating with

" his own ſubjects as with ſtrangers, and to expect the formality of pow-
" ers; but, being determined to do what was right, they might inform
" their employers, that, though he will not deſtroy their charter, he
" had reſolved to reduce them to a more palpable dependence on his
" crown, in order that they might be of uſe to him in times of neceſ-
" ſity."[47] And yet, with an inconſiſtency which would have convinced men of leſs penetration of a want of real vigour, they were ordered to procure larger authority, to enable them to conſent to a regulation of the government by a new patent. The deſigns of the adminiſtration being here fully diſcloſed, an opportunity was given to thoſe, who had determined never to give up one letter of the charter but with life, to counteract them: And freſh powers for ſuch a purpoſe were aſked for in vain.

Were not, however, the agents inſtructed to yield any thing on the part of the colony, they were ordered to requeſt favours of the parent country. After ſtating, with great force, the various burdens that depreſſed its commerce, they humbly requeſted what would conduce much to its encouragement, what would be moſt thankfully accepted; *that they might not be obliged to pay double taxes on the productions of their neighbouring plantations*; that they might be allowed to import the neceſſary ſupplies for New-England, of the commodities of Europe, without coming firſt to England; *being moſt willing to pay all his majeſty's duties upon their arrival at Boſton.*"[48] Thus did they ſolicit, with a happy moderation, a relaxation of the acts of navigation while the manufacturers of England clamoured for a rigorous execution of them; while the coloniſts denied their authority, and prevented their operation: Thus did they propoſe to pay, with alacrity, duties impoſed by act of parliament, at a time when no cuſtom-houſe had been erected, and the introduction of its officers was oppoſed as an evil deſtructive of freedom. But, as a palliative to a line of conduct, which it probably foreſaw muſt occaſion diſguſt, the general-court ordered the agents to deliver anſwers to the inquiries that had been formerly tranſmitted by the committee of plantations. This extraordinary paper is remarkable, not only for diſcloſing many curious particulars of the condition of Maſſachuſets, but for evincing the admirable talents of the agents, for diſcolouring

diſcolouring truths which they wiſhed to conceal.[49] Randolph, however, gave in a very different repreſentation of things.[50] Yet neither is to be altogether relied on. The deſigns of the agents led them on that occaſion to ſhew "the very mean condition of the plantation." His duty, as a perſon who wiſhed to promote the views of the court and his own intereſt, required him to diſplay the greatneſs of its wealth, the extent of its commerce, the magnitude of its power, the irregularity of its conduct. Men of diſcernment ſaw enough of the truth, notwithſtanding every diſguiſe, to induce them to wiſh for a reformation of abuſes, which had rooted with the ſettlement of the colony, which had become ſanctified by time, which at preſent were not only inconvenient, but led to conſequences in future extremely to be feared.

The committee having thus received every poſſible information, and entered into a ſerious conſideration of the affairs of New-England, in April, 1678, deſired the opinion of the crown-lawyers, whether the original patent had ever any legal entity; whether the corporation, by mal-adminiſtration of its powers, had not forfeited whatever authority it may have once had, ſo as to be now in his majeſty's diſpoſal. They ſent Randolph, the uſual agent on ſuch occaſions, "to inform them of "ſeveral matters of fact:" But the anſwer of Jones and Winnington[51] was evaſive and cold. They however delivered ſeparate reports of thoſe ordinances of Maſſachuſets, which they conceived to have been enacted contrary to its charter, and to the laws of England; the former remarking, "that the agents ſeemed aſhamed of many of the regulations which "had been objected to."[52] The lords commiſſioners at length delivered to the agents, to be by them tranſmitted to the general-court, a long and ſpecific liſt of thoſe various evils that had commenced with the conſtitution itſelf, that had expanded themſelves in its progreſs, and now produced ſo much diſorder and vexation, for which they demanded an immediate remedy: Declaring "how much they reſented that no "more notice had been taken of what had been formerly intimated "with ſo much ſoftneſs to the agents; and, far from adviſing his ma-"jeſty to grant a pardon to the colony, they are of opinion the whole "matter ought to be ſeverely ſearched to the very root."[53] They ſoon after

after recommended Randolph to the Lord-treaſurer Danby, as the propereſt perſon for collector of Boſton: Aſſuring that miniſter, "that "they had received more information from him about New-England "than of all other men."[54] Being approved of, a commiſſion for the appointment of a cuſtom-houſe officer for New-England was, for the firſt time, granted, in May, 1678. Yet the treaſurer having, in the beginning of the ſubſequent year, deſired to know how the contingent charges of that office were to be defrayed, unleſs from the exchequer, they gave it as their opinion, that, until his majeſty ſhall convince the colony that he is abſolutely bent upon a general reformation of the abuſes of that government, they cannot hope for any good from the ſingle endeavour of one man; and, as expedients were ſoon to be offered, for bringing it to ſuch a dependence on his majeſty's authority as the other colonies, they ſubmitted it to his judgement if it were not beſt to ſuſpend the departure of ſuch an officer for the preſent."[55] Thus was laid the train of that mine, which was in a few years to blow up that fabric of government, which the priſtine emigrants had erected with ſo much addreſs, which their poſterity guarded with a zeal bordering on enthuſiaſm. They conſidered their chartered privileges as derived from above: They would have deemed it ſacrilege to permit them to be taken away with their conſent, or invaded.

It was impoſſible for the agents to ſhut their ears againſt the popular clamour in England, with regard to the conduct of their employers. They heard with pain the reiterated complaints of the unoffending Quakers, who had been again perſecuted, as we have ſeen, for the faults of others, for the gratification of fanatic minds; and they gave notice to the general-court, among other things, "that this conduct had loſt "them many friends;" but, above all, "that the country's not obſer-"ving the acts of navigation had been the moſt unhappy neglect of any, "ſince every day it appeared more certain that, without a fair compli-"ance in that matter, there could be nothing expected but a total "breach." While the agents thus gave a juſt repreſentation of affairs in England, they found that, as had been often experienced by ambaſſadors of greater name and importance, the exhibition of a genuine pic-

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ture did not gain them much credit or popularity at Boſton: And, as generally happens in popular ſtates, their deficience of ſpirits and ſucceſs were equally attributed to want of talents or zeal.[56] All their ſucceſſors, who did not deceive the people or promote their factions, have met with a ſimilar fate.

Mean-while the colony, according to ancient cuſtom, faſted and prayed repeatedly, in order to procure ſucceſs to the endeavours of the agents for obtaining the king's favour, and the continuance of chartered privileges: And a ſynod was convened, to inquire what reaſons had provoked the Lord to bring his judgements on New-England; what was to be done to remove them. Whatever may have been the ſucceſs of theſe pious arts, the general-court, with its accuſtomed adroitneſs, uſed a variety of natural means to avert "the ſtorms of diſpleaſure," which threatened its exiſtence. It tranſmitted, in the beginning of the year 1679, ſeveral addreſſes, couched in the uſual terms of profeſſion, the frequency of which now blunted their efficacy, in order, if poſſible, to divert Charles from his avowed purpoſe. It enacted laws to remove the cauſes of ſome of the complaints againſt the colony: Paſſing an ordinance to puniſh high-treaſon with death; to require all perſons to take the oath of allegiance, ſhewing itſelf an example to others. "The "king's arms were put up in the court-houſe." But, as we are aſſured, "it was a more difficult thing to conform to the acts of trade." It wrote to the agents what had been done; acknowledging what was known to all, that no regard had been paid to theſe laws. It argued; "that "the acts of navigation were an invaſion of the rights and privileges of "the ſubjects of his majeſty in that colony, they not being repreſented "in the parliament; becauſe, according to the uſual ſayings of the "learned in the law, the laws of England were bounded within the four "ſeas, and did not reach America; but that, as his majeſty had ſignified his pleaſure, that they ſhould be obſerved, it had made proviſion "by an ordinance of the colony, which obliged maſters of veſſels to "yield faithful obedience, which commanded officers to ſee them ſtrictly "obſerved."[57] Thus we hear, for the firſt time, that the coloniſts, though in the ſame breath ſwearing allegiance to the crown of England,

were

were not bound by acts of parliament, becauſe they were not repreſented in it. But this *uncommon* pretenſion was in a confidential letter to the agents, who had been queſtioned on this ſubject in terms of great diſcontent and jealouſy. In public any *formal* oppoſition was diſclaimed. To the ſecretary of ſtate the governor excuſed the colony, by ſaying, "that it was impoſſible to prevent ſome veſſels going to France and "Holland, the owners of which *paid the duties in the colony*; but that it "had never traded irregularly for more than five thouſand pounds a "year."[58] How extremely remarkable, that the topic of repreſentation ſhould have been oppoſed, in thoſe days, to the acts of navigation, that were deemed an invaſion of colonial liberties, and not to parliamentary taxation, which had been exerciſed, which the coloniſts moſt willingly admitted, the produce of which they actually paid! What a revolution in the ſentiments of men! How ſingular, that the object of grievance ſhould have gradually veered round; that their poſterity ſhould have found it, in the preſent times, blowing from the very oppoſite quarter!

The agents, no longer eaſy in England, becauſe the great object of their embaſſage had failed while their affairs ſuffered at Boſton, again petitioned for that leave to depart, which was granted to their prayers in May, 1679. Randolph inſtantly followed them, to execute his office of collector, and at the ſame time to act as a ſpy upon the ruling men.[59] Charles affected to be pleaſed with what the general court had done for the obſervation of the acts of trade. But, though paſt errors and miſtakes were covered with oblivion, he reſolved to keep its affairs "in a "fair way of amendment," till a "fitter ſeaſon" permitted him to reſume their conſideration, and to regulate that government; which was equally neceſſary for his dignity and for their ſettlement. With all theſe views he wrote to the general-court, in July, 1679, that, being then taken up with the proſecution of a popiſh plot, he could not find ſpeedy leiſure to enter on tranſactions that might have been determined, had the agents brought with them ſufficient authority, which they diſclaimed. He required that others ſhould be ſent over within ſix months, properly inſtructed: Giving a reaſon which ſtruck at the foundation of its power; "that, ſince the charter, by its frame, was originally to have been exe-

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" cuted within the kingdom, otherwiſe than by deputy, it is not poſſi-
" ble to eſtabliſh perfect ſettlement till thoſe things are better under-
" ſtood." Among other requiſitions, he commanded: That liberty of conſcience ſhould be allowed to thoſe of the church of England, or other ſubjects, not being papiſts; that all of competent eſtates ſhould be admitted freemen and magiſtrates; that the number of aſſiſtants, which the charter required, ſhould be choſen in future; that thoſe, who were inveſted with any privilege or office, ſhould take the oath of allegiance; that military commiſſions and proceſs of courts ſhould run in his name; that all ordinances, repugnant to the laws of trade, ſhould be aboliſhed; that every aſſiſtance ſhould be given to the collector of his cuſtoms, in diſcharge of his duty.[60] Nothing can more fully demonſtrate, than did theſe requeſts, the greatneſs of his embarraſſments, the extent of his projects, the obſtinacy of his perſeverance in reducing the independence of that colony to ſubjection to his crown and the laws. His conduct, on that occaſion, ſhewed, that ſteadineſs, conducted by prudence, will overcome the greateſt difficulties.

Nevertheleſs Randolph no ſooner attempted to execute his office, than all his efforts proved as fruitleſs as had been foretold by the committee of plantations. He complained vehemently of the difficulty of his ſituation, and of the obſtructions that were daily oppoſed to his exertions.[61] The governor defended the colony, by remarking; " that Randolph had " been very active, and had as much help from himſelf as he could give, " yet he had complained of affronts and diſcouragements; becauſe the " people did not ſhew much reſpect to the man who was conſidered as an " enemy."[62] When informations were filed by the collector, in the courts of juſtice, for breaches of the acts of navigation, " he was gene-
" rally, if not always, condemned in coſts." The general-court, however, did not altogether diſregard the requiſitions before-mentioned: It filled up the number of the aſſiſtants agreeably to the charter; it ordered all commiſſions to iſſue in the royal name; it commanded the oath of allegiance to be taken; the governor was ſworn to execute the laws of trade: But the command the moſt material of all, that of ſending agents to England, it paſſed over in ſilence; apologizing for this neglect by ſaying,

" that the country was poor, proper perſons were afraid of the ſeas as " the Turkiſh pirates had lately taken their veſſels, and that his majeſty " was ſtill employed in the moſt important affairs :" And it appointed a committee to review its whole ſyſtem, that whatever might be found repugnant to the laws of England might be repealed.[63] Randolph returned to England in the end of the year 1680 to complain of thoſe obſtructions, which had been foreſeen, and to ſolicit freſh authority, that was equally derided, becauſe there exiſted no power to ſupport what the principles of the people and the forms of the government equally oppoſed.

When the tranſactions before-mentioned were, however, communicated by the governor to Charles in September, 1680, far from being gratified by conceſſions, which appeared to the general-court ſo conſiderable and to him ſo trivial, his former reſentments ſeem to have been only rouſed. He was now thoroughly acquainted with its affairs, its maxims, its uſual arts; and his ſagacity eaſily penetrated the thin covering which it had thrown over its intentions. In proſecution of his former policy, " of keeping the buſineſs of New-England in a fair way of amendment," he ſoon after remonſtrated: That, on the moſt inſufficient pretences, the general-court had taken no notice of ſeveral of his late requiſitions; that it had repealed no ordinances contrary to the laws of England or the royal prerogative; that it continued to raiſe taxes on traders who were not members of the corporation; that it diſcouraged the officers of the cuſtoms; that it continued its irregular trade: And he admoniſhed it of its duty, and required that agents ſhould be ſent to England, in three months, fully inſtructed to attend the regulation of its government.[64] Encouraged by this vigorous ſtep, and armed with additional powers, Randolph made one more animated attempt, in the beginning of the year 1681, to execute his office. He laid his commiſſion before the general-court, and requeſted its countenance and aid, to enable him to render it effectual. But little attention was given to an authority which was ſo abhorred, or to a perſon who was ſo obnoxious: And, by a letter to the governor, he demanded the final reſolution of the court, " whether " it will admit the patent above-mentioned to be in force or not; that " he may know how to govern himſelf." It remained ſilent:[65] Thus

ſhewing

ſhewing equally its contempt for the man and the embarraſſment of its ſituation.

Being fully informed of this conduct, ſo contrary to the laws of England, and to thoſe projects of reformation that he had long revolved in his mind, Charles, in October, 1681, once more remonſtrated: That the collector of his revenues had been unable to execute his office with effect, and not only were attachments brought againſt him and his officers, but he had been obliged to depoſit money before he could bring actions againſt offenders; that appeals to England, in matters of revenue, had been refuſed; that the general-court had ſeized the moiety of forfeitures, due to him by law: And he required it to make reſtitution of the money levied of the officers, that they might be encouraged in putting the laws of trade in execution, as in England; that it ſhall, without delay, give an account of forfeitures; that appeals ſhall be allowed: And he threatened it with a writ of quo-warranto, ſhould it any longer delay to obey his repeated commands.[66] To what a ſtate of degradation was a king of England reduced, in a controverſy tedious and diſguſting; in which, from the peculiarity of his ſituation, he could only ſupport the commercial ſyſtem with the feebleneſs of repreſentation. The firſt magiſtrate of a great empire found reaſon to exclaim: How weak are the declarations of poſitive law in oppoſition to the ſpirit of a people!

The general-court exculpated itſelf, as well by denying the charge as by ſaying; that the collector was acknowledged, ſince his commiſſion had been enrolled; that no improper ſuits had been commenced againſt the officers, from whom no depoſit ſhould in future be required; that it knew of no forfeitures: But, as to appeals, it hoped they would be farther conſidered. In this ſingular tranſaction, wherein we behold the ſtruggle made in oppoſition to the acts of navigation and to the officers of the revenue, we find diſplayed an invariable principle of that colony: It acknowledged, by words, the authority of the collector; but its actions prevented the effectual execution of his office. Randolph, having written that he was in danger of being puniſhed with death, as a ſubverter of the conſtitution, by virtue of an ancient law, was, in September, 1682, ordered to return to England: And this additional reaſon

was given; "as he cannot perform his duty, and may be uſeful here "in the regulation of that government." [67]

Two parties naturally ſprang up within the colony during thoſe days of diſtraction, or rather had at all times exiſted in it. All agreed in the importance of their chartered privileges, but they differed with regard to their nature, their extent, the means of defending them. The faction, which was directed by Danforth, the deputy-governor, oppoſed ſending agents to England, or ſubmitting to the acts of navigation; and it contended for adhering to the patent, according to its own conſtruction of it, which amounted to independence. But the moderate party, which was led by the aged Bradſtreet, the governor, who had ſurvived all the original emigrants, wiſhed to promote the intereſt of the colony, by taking advantage of times and events. The victory, which Charles II. obtained over his opponents in England, aſſuredly gave him a ſimilar triumph over his adverſaries in Maſſachuſets. And men of moderation had the influence to obtain the appointment of agents, in February, 1682, though it was a matter of ſome difficulty to get men to accept of an office ſo extremely thankleſs; as well to anſwer the various complaints againſt the colony as to diſpel, if poſſible, the cloud of diſpleaſure which had ſo long hung over it. Yet they were expreſſly inſtructed to conſent to no act that ſhould infringe the liberties granted by charter, or the government eſtabliſhed thereby. And, according to the never-failing practice, a faſt-day was appointed, to pray for the preſervation of the patent, for ſucceſs to their agency. [68] At the ſame time, however, that the general-court ſteadily adhered to what it deemed its juſt rights, it endeavoured to mollify that monarch, as well by their accuſtomed profeſſions of loyalty as by more ſubſtantial arguments; which ſhew that its ſagacity had diſcovered his real character. It had formerly preſented him with a ſhip-load of maſts, for the uſe of the navy of England, the freight of which alone had coſt ſixteen hundred pounds, which he graciouſly accepted. [69] The royal fleet being in want of proviſions, when in the Weſt-Indies, a ſeaſonable ſupply was tranſmitted, and it received, in return, a letter, ſignifying how well taken it was by his majeſty. From the Reſtoration to this year, the miniſters of England had been corrupted; the clerks of the

the council had been retained in conſtant pay by the wages of iniquity, in order to communicate the ſecrets of adminiſtration: The general-court now attempted to bribe the king himſelf. Urged by the neceſſity of the occaſion, when every thing dear was at ſtake, becauſe the beloved charter was in danger, it eaſily liſtened to the advice of Cranfield, the governor of New-Hampſhire, who is ſaid to have ſuggeſted, "to tender Lord Hyde an acknowledgement of two thouſand guineas, for "his majeſty's private uſe." But the ſecret of this delicate tranſaction being diſcloſed, as we are aſſured, by the adviſer of it, the ridicule of the court was turned againſt the colony with irreſiſtible ſucceſs.[70] Yet the failure of this intrigue may, with greater probability, be attributed, partly to the aukwardneſs of the agents, but more to the probity of Lord Rocheſter, who, amid corruption, retained his integrity. That body diſcovered, when it was too late, that *honeſty is on all occaſions the beſt policy*.

It ſoon appeared, however, that the deputies were not inveſted with the powers which had been required, and therefore expected. It was in vain for them to preſent the addreſs of the general-court, "humbly craving "the royal pardon for former irregularities, which had been continued "through inadvertence and not through contradiction; promiſing to "hold itſelf ſtrictly obliged, for the future, to the rules preſcribed by "the charter."[71] As theſe promiſes gave little ſatisfaction, becauſe they were deemed inſincere, the deputies were ordered, in September, 1682, to apply to their principals, for full powers to enable them to conſent to a regulation of that government: And they were again threatened with a writ of quo-warranto.[72] The agents repreſented to the general-court the condition of the colony as deſperate; that, as many cities in England and ſome of the plantations had ſubmitted, they deſired it to determine, whether it was better to reſign itſelf to the king's pleaſure or to ſuffer a writ to iſſue. Not only the general-court, but the inhabitants, by the advice of their miniſters, reſolved, after conſiderable debate and conſideration; "that it was better to die by the hands of o-"thers than by their own:" Thinking it more honourable and more ſafe to ſubmit to an exertion of power which it could not reſiſt, than,

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by an act of the legiſlature, to abrogate a beloved conſtitution, that could not afterwards be eaſily reſumed upon a change of times. It again tranſmitted an addreſs, containing ſimilar profeſſions and ſimilar promiſes. It inſtructed the agents "to deliver up the deeds for the province "of Main," ſhould that act be conſidered as an equivalent for the preſervation of the patent; but to make no conceſſions of any of its chartered privileges.[73] What a picture do theſe tranſactions diſplay of the temper of the people of Maſſachuſets: And what leſſons of prudence ought they to have taught to the miniſters of England!

But as the one party in this ſingular controverſy refuſed to ſubmit to that regulation which the other had reſolved on, becauſe it was neceſſary, articles of high-crimes and miſdemeanour were preſented to the committee of plantations, by Randolph, againſt the corporation, in June, 1683.[74] The writ of quo-warranto was at length ordered. Randolph's was the ominous hand which carried it acroſs the Atlantic: And, to give weight to the meſſenger, who, in Maſſachuſets, had little in himſelf, and to the proceeding, which was equally obnoxious, a frigate was ordered to tranſport him thither.[75] The agents, fearing leſt their ſtay in England might countenance the preſent conduct of the court, deſired leave to return, as they had no power, neither were they willing, to anſwer the writ. But, to prevent too great an alarm within the colony, a royal declaration was at the ſame time tranſmitted; that, notwithſtanding the quo-warranto, no private rights ſhould be affected.[76] When all theſe arrived at Boſton, the general-court once more conſidered the critical ſtate of its affairs. The governor and the greater number of aſſiſtants, actuated by the caution of age, reſolved to ſubmit to the royal pleaſure, and tranſmitted an addreſs for that purpoſe. The delegates, animated by the principles natural to a repreſentative body, and invigorated by the deciſive influence of the clergy, who foreſaw a loſs of conſequence in the alteration of government, in November, 1683, refuſed their aſſent. So much did the people of Boſton deteſt Randolph as the author of all their woes, that they believed he had carried a torch through their ſtreets, becauſe a conflagration happened on the day after his arrival: The ſame paſſions have prompted the populace of all countries to adopt ſimilar ſuſ-

picions,

picions, and to credit implicitly ſimilar imputations. After a variety of obſtructions, ariſing from the diſtance, the novelty, and real difficulty, of the buſineſs, a judgement was given for the king, by the high-court of chancery, in Trinity-term, 1684, againſt the governor and company of Maſſachuſets, " that their letters patents and the enrollment thereof " be cancelled." [77]

Thus ended the ancient government of that colony, by legal proceſs; the validity of which, however, has been queſtioned by very great authority. The houſe of commons, inflamed probably by the juſt and general indignation againſt the violent proceedings with regard to the corporations in England, at a ſubſequent period reſolved, " that thoſe quo-" warrantos againſt the charters of New-England were illegal and void." But, when the judgement before-mentioned was re-conſidered by thoſe eminent lawyers and Whigs, Treby, Somers, and Holt, they gave it as their opinion, " that, were it reverſed, and the general court exerciſed " the ſame powers that before the quo-warranto it had done, a new writ " would iſſue againſt it, and there would probably be ſuch a judgement " as to leave no room for a writ of error." [78] It was plainly perceived, notwithſtanding every endeavour to conceal it, that the general ſtrain of the government, which had been eſtabliſhed in Maſſachuſets, was as inconſiſtent with its charter, as with any kind of dependence on England, or attention to its laws, which could not have been defended by fair diſcuſſion in any court of law, under the moſt equitable adminiſtration. Charles II. was undoubtedly reduced to that perplexing dilemma, which has occurred in modern times, and occaſioned ſuch embarraſſments, of either admitting the real independence, though nominal ſubordination, of Maſſachuſets, or of adopting ſome vigorous and deciſive meaſure, for defending the juſt authority of the laws, and enforcing their execution; for ſupporting the actual government of the ſtate over its dependent province. The general-court, indeed, had obliged the coloniſts to ſwear allegiance to that monarch as their king; had ordered all proceſs to iſſue in his name; had cauſed his arms to be diſplayed over the ſeat of juſtice: But his kingſhip was merely nominal, without any authority, becauſe he was admitted to perform no one governmental act. By a ſtrange ſoleciſm in

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policy, the ſupreme executive magiſtrate of the empire had been excluded from the power of executing the acts of the ſovereign legiſlature, or of preventing the eſtabliſhment of regulations utterly inconſiſtent with the nature of the relation between that colony and the parent-country, of which it was a territory.

Notwithſtanding the long train of public diſputes which have been remarked, New-England flouriſhed prodigiouſly. She promoted ſucceſſfully the operations of agriculture; ſhe augmented her manufactures, and extended her commerce; and ſhe acquired wealth and population in proportion to the greatneſs of all theſe; becauſe the rough hand of oppreſſion had not touched the labours of the inhabitants, or interrupted the freedom of their purſuits. The infelicities before-mentioned only promoted their intereſts by giving life to their exertions. It is general habits of inattention, of indolence, and of univerſal lethargy, the never-failing conſequence of both, that depreſs a people, that produce a diſquietude and poverty which always bring along with them diſſatisfaction, inſurrection, and every diſorder that can afflict a nation. While the Dutch wars ruined the traffic of the ſouthern colonies, they little interrupted the trade of New-England, becauſe it was her conſtant maxim to engage in commercial dealings equally with friend and foe. And ſhe was little diſturbed by ſome inconſiderable incurſions of the Indians on her eaſtern borders; becauſe her ſuperior vigour eaſily repelled their aſſaults, and compelled them to ſue for peace on the uſual terms of Indian treaties; which we are aſſured was the firſt made by that colony with the eaſtern tribes.

The charter being now vacated, the miniſters of England, as early as November, 1684, thought it prudent to conſider of a proper mode of government for that colony. Colonel Kirk, whoſe notoriety has procured him a conſpicuous place in the annals of his country, was then appointed governor of Maſſachuſets, New-Hampſhire, Main, and New-Plymouth: And it was determined that there ſhould be no mention of an aſſembly, but that the power to make laws ſhould be inveſted in a governor and council during pleaſure. But, before his commiſſion and inſtructions could be finally ſettled, the demiſe of Charles, in the beginning

ning of the ſubſequent year, annulled his appointment,[79] and for the preſent defeated the arbitrary ſyſtem which was thus intended. That monarch lived not to complete the plan of reformation which he had vigorouſly begun, or to rear up a fabric of government for Maſſachuſets in the place of what he had thus laid in ruins. And Kirk, having never aſſumed the guidance of reins which he was diſqualified by nature to direct, was reſerved to contribute, by his cruelties to the unfortunate at a ſubſequent period, to bring unpopularity and exile on the immediate ſucceſſor of a monarch, who was regretted by his ſubjects in proportion as they dreaded events to come.

James II. no ſooner aſcended the throne, than he tranſmitted proclamations of that event, to be publiſhed in New-England.[80] The letter, which conveyed official notice of that deplored event to the governor and magiſtrates, informed them, in the language of inſult, which ought never to be ſpoken to the afflicted, "that they were not written to as a "government, their patent being cancelled;"[81] which, by putting them in remembrance of what they had loſt, ſerved only to throw a gloom over a tranſaction where gladneſs ſhould alone have preſided. This prince was proclaimed at Boſton, in April, 1685, with ſorrowful and affected pomp.[82]

Ten months had paſſed away ſince the diſſolution of the patent, during which the former adminiſtration, though feeble and conſumptive, governed the colony, when it was deemed neceſſary to eſtabliſh a temporary government for the preſervation of order. With this deſign, a commiſſion paſſed, in September, 1685, appointing a preſident and council, compoſed of the moſt loyal of the inhabitants, for the government of Maſſachuſets, New-Hampſhire, Main, Narraghanſet, till the chief governor ſhould arrive. They were created a court of record, for the adminiſtration of juſtice, in affairs civil and criminal; ſo that the forms of proceedings and judgements be conſonant to Engliſh laws, as near as the circumſtances of the colony will admit: And an appeal was reſerved to the judicatories of England. They were empowered to eſtabliſh county-courts, and to appoint judges and officers. Liberty of conſcience was allowed to all; but the church of England was to be peculiarly encoura-

ged. For the ſupport of that government, which they were thus empowered to exerciſe, they were authorized to continue the collection of thoſe taxes that had been already impoſed.[21] Thus the authority of the preſident and council was merely executive, ſince they were inveſted with no portion of the legiſlative power: They might enforce the laws already in being; but they could enact none.

Dudley, a native of the colony, who was now appointed preſident, becauſe, when agent, he had promoted the views of the court, was received with the leſs reluctance, though he had rendered himſelf obnoxious to his countrymen, from the general expectation of Kirk as governor; "from whom they apprehended ſomething of the ſame tragedy as he "had been acting in the weſt of England." In May, 1686, was read to a great concourſe of people, "in open court," the exemplification of the judgement againſt the patent; the royal commiſſion was publiſhed; and, with the proclamation of the change of government, was promulgated "indulgence in matters of religion." The preſident ſoon after laid before the council "a libellous paper," containing a declaration of ſome of the deputies of the late general-court. They inſiſted, that the whole unqueſtioned privilege of the ſubject was transferred by the commiſſion to the preſident and council; there being no mention of an aſſembly: And they reluctantly ſubmitted to a power which they could not then oppoſe; proteſting, "that, though they could not give their "aſſent thereto, they ſhould demean themſelves as loyal ſubjects, and "humbly make their addreſſes to God, and in due time to their gracious "prince, for relief." The preſident and council at the ſame time continued the duty of a penny a pound of the value of merchandiſe imported, and other taxes, which they ordered to be collected as formerly. They empowered the town of Boſton to levy the accuſtomed duties for internal purpoſes. And they declared in force the ancient ordinances of the general-court. The colony, nevertheleſs, underwent little change. Its laws and cuſtoms, its church, both in worſhip and diſcipline, continued the ſame. The courts of juſtice remained nearly on the former plan. And the ſhort adminiſtration of the preſident, though the houſe of delegates was laid aſide, "was not, as we are aſſured, very grievous:"[22] Yet

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it met with oppoſition. While the preſident and council tranſmitted a loyal addreſs to their ſovereign, in return for the flattering change of government, they ſent a memorial to the lords of the council for colonies by a ſpecial agent. It ſolicited the annexation of Rhode-Iſland and Connecticut to Maſſachuſets ſhould their charters be cancelled: It repreſented "that a well-regulated aſſembly, to repreſent the people, ought to "be allowed, as extremely needful:" It begged for an abatement of the taxes impoſed by parliament. But their conduct did not give perfect ſatisfaction in England. Complaints were tranſmitted againſt them, that they connived at former practices in oppoſition to the laws of trade, and countenanced ancient principles in religion and in government.[86] They too complained of their inability to ſupport government, as the acts of taxation were nearly expired, and they had not authority to renew them without an aſſembly. In the beginning of the year 1686, it was therefore deemed neceſſary to eſtabliſh a permanent adminiſtration for New-England. Happy, had James rebuilt the ſtructure with a regard to the conſtitution, and to the privileges of his ſubjects, equal to the perſeverance and prudence of the moſt careleſs of monarchs in pulling it down! He was entitled to poſſeſs the whole executive power; they had as juſt a right to participate in the legiſlature. It was in vain for the crown-lawyers to give their official opinion; "that, notwithſtanding the "forfeiture of the charter of Maſſachuſets, its inhabitants continued "Engliſh ſubjects, inveſted with Engliſh liberties."[87] For, alas! the heart of James was enamoured of arbitrary power. Jeffereys was now chancellor of England. And it was determined to conjoin the legiſlative and executive authority in the ſame perſons; whereby a tyranny was eſtabliſhed.

Sir Edmond Andros, "who, we are aſſured,[88] excepting his bigotry "to popery and to the arbitrary power of his prince, was a good moral "man," was appointed captain-general and vice-admiral of Maſſachuſets, New-Hampſhire, Main, New-Plymouth, Pemaquid, Narraghanſet, during pleaſure. He was empowered, with conſent of a council, to be appointed by the crown, to make ordinances, for thoſe colonies, which ſhould not be inconſiſtent with the laws of the realm, and which ſhould

be tranſmitted for approbation or diſſent, and to impoſe taxes for the ſupport of government. He was authoriſed to govern them, according to his commiſſion, his inſtructions, and to the laws which were then in force or might be afterwards eſtabliſhed. The governor and council were conſtituted a court of record, to hold plea of actions, civil and criminal; provided the forms of proceeding, and judgements, were as conſonant to the laws of England as the circumſtances of the country would admit. He was enabled to erect county-courts; reſerving an appeal to the governor and council, and from them to the king: And to appoint neceſſary officers and magiſtrates. The greater part of the inſtructions, which were given on that occaſion, would have done honour to a patriot king during the moſt virtuous times: And nothing was there wanting to inſure the real happineſs of the people, but an effectual check againſt the abuſe of the powers which were thus conferred. Andros was inſtructed: To appoint no one of the council, or any to other offices, but thoſe of the beſt eſtates and characters, and to diſplace none without ſufficient cauſe; to continue the former laws of the country, ſo far as they were not inconſiſtent with his commiſſion or inſtructions, till other regulations were eſtabliſhed by the governor and council; to confirm and diſpoſe of ſuch lands as were in the power of the crown to grant, at a quit-rent of two ſhillings and ſix-pence a hundred acres; "to take away or to "harm no man's life, member, freehold, or goods, but by eſtabliſhed "laws of the country, not repugnant to thoſe of the realm;" neither to impair the revenue, nor to grant eſcheats, or forfeitures, of greater value than ten pounds, without ſpecial direction; to levy the former taxes for the ſupport of the eſtabliſhment, and to diſcipline and arm the inhabitants for the defence of the country, but not to impede their neceſſary affairs; to encourage freedom of commerce, by preventing ingroſſers; to hinder the exceſſive ſeverity of maſters to their ſervants, and to puniſh with death the killers of Indians or Negroes; to allow no printing-preſs; to give univerſal toleration in religion, but encouragement to the church of England; to execute the laws of trade, and prevent frauds in the cuſtoms.[89] Never, perhaps, was there exhibited, in the ſame ſtate-paper, ſo great a regard to the rights of men and to the privileges of the citizen,

citizen, or ſuch a diſregard to both, as were diſplayed in theſe inſtructions, and in the conſtitution which was then eſtabliſhed for New-England: The form was altogether arbitrary; the eſſence was favourable to real freedom. That meaſure was adopted, which could alone ſupport ſuch a government over ſuch a people: A ſmall military eſtabliſhment, conſiſting of two companies of ſoldiers, was formed, and military ſtores were tranſported.[90] In order to facilitate the colonial commerce, Andros applied for leave to continue the practice, that had commenced in the year 1652, that had been purſued to this time notwithſtanding the prohibitions of Charles, of coining money at Boſton. But the project being referred to the officers of the mint, they confuted his arguments, and decided againſt his application. But he was empowered to regulate the circulation and value of foreign coins.[91]

Andros arrived at Boſton in December, 1686. He was received with a ſatisfaction in proportion only as he was leſs dreaded than Kirk. He immediately publiſhed his commiſſion, and aſſumed the adminiſtration of the various colonies committed to his charge. And to the others he at the ſame time annexed Rhode-Iſland, by virtue of an order which he brought with him for that purpoſe; demanding its charter of Clarke, the late governor, which he promiſed to deliver "at a fitter ſeaſon."[92] The colonial hiſtorians concur in repreſenting: That though his adminiſtration at firſt gave great encouragement, he too ſoon copied the arbitrary rule of James in England; going even beyond it, by depriving the coloniſts of their lands, on pretence, that when the charter was vacated theſe became forfeited; that he threatened them with the loſs of their religious liberties, by no longer tolerating the congregational mode of worſhip, and taking from them their churches; that he levied troops by an impreſs, ſo inconſiſtent with freedom, however agreeable to the ancient law; that he reſtrained the liberty of the preſs, though there was not the ſame reaſon, as we are aſſured, to complain of this, as if it had been free before; that he enacted laws, and impoſed taxes, without an aſſembly; that a reſtraint was laid upon marriages, by not ſuffering "magiſtrates to join people in matrimony;" that his arbitrary fees and exactions were intolerable. Such is the frightful picture exhibited of the adminiſtration

adminiſtration of Andros. But it is extremely heightened by numerous ſtrokes of the hand of party, which never views affairs in their true light, and ſeldom condeſcends to examine with accuracy. And the charges of greateſt magnitude were not the faults of the governor, but of the conſtitution; the ſmaller accuſations aroſe from actions directly contrary to his inſtructions. Did he act contrary to them and to his commiſſion, he had been the moſt faithleſs of ſervants, and moſt criminal of men. But he did not. For, when the agents of the province impeached him before William, they accuſed him not of acting inconſiſtent with either, but of having exerciſed an authority unconſtitutional and tyrannous.[93] His conduct was approved of by James; and he was again appointed a colonial governor by William, becauſe he equally appeared to him worthy of truſt. Unhappily oppreſſed by a real tyranny, the coloniſts of thoſe days beheld every action with diſeaſed eyes, and their diſtempers have deſcended in a great meaſure to their hiſtorians, who have retailed political fictions as indubitable truths.

The grand legiſlative council, which had been thus eſtabliſhed, and was compoſed of the principal perſons of the various colonies beforementioned, readily aſſembled, and ſoon paſſed a variety of laws, either for continuing the former ſyſtem, or for eſtabliſhing regulations which ſo conſiderable a change made abſolutely neceſſary. The act for reviving the late mode of taxation paſſed, however, with that reluctance which men always diſcover when they feel themſelves made the inſtruments of power to rivet the ſhackles of their country. It met with oppoſition from a different quarter, of a kind much more to be dreaded. The inhabitants of ſeveral towns in the county of Eſſex, feeling themſelves freemen, and inſiſting that they were ſuch, refuſed to lay the aſſeſſments, without which the taxes could not be collected. The feeble, but magnanimous, efforts of expiring freedom were conſidered as the ebullitions of a dangerous ſedition, which merited puniſhment in proportion as the example was pernicious: And the leaders of the people, whoſe laudable exertion merited praiſe, were inſtantly puniſhed, as incendiaries, by the courts of juſtice, which were intereſted to preſerve the public quiet.[94] And this feeble effort ſeems to have been the only oppo-

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ſition which was made within thoſe colonies to that ſyſtem of tyranny which James had eſtabliſhed, and Andros was appointed to execute. He gave notice that the whole public revenue would be inſufficient to defray the public expence; and he propoſed either to change the mode of collection, or to enhance thoſe duties which had been already impoſed. But, with a candour which does him honour, and with an attention to the intereſts of New-England which has been ill-requited, he repreſented, at the ſame time, that he found the country extremely poor; owing to its loſſes, by land, from the late Indian war; by ſea, from pirates and ſhipwreck. Yet that monarch, with a ſeverity of temper which misfortunes only could mollify, gave orders to raiſe the amount of the taxes to an equality with the neceſſary charges of the adminiſtration.[95] He ordered his declaration for liberty of conſcience, that contributed to entail on his family ſo many woes, to be publiſhed in New-England; which was accordingly performed in Auguſt, 1687. He announced a treaty of neutrality, with the French, for America; which he commanded to be ſtrictly obeyed. He directed the governor to grant pardons to all his ſubjects who deſired them; but no one ſeems to have aſked for what appeared to the people only of uſe to the guilty. His general inſtructions, and theſe orders, Andros ſeems to have punctually obeyed; becauſe, as a ſoldier, he deemed it a point of honour to execute whatſoever was given him in charge. The acts of navigation, the breaches of which were the principal cauſes of the preſent unhappineſs, were now ſtrictly executed. Having procured the uſe of the South meeting-houſe at Boſton, while not otherwiſe employed, the ſervice of the church of England was here regularly performed; was conſtantly attended by the governor, who has been miſrepreſented as a Papiſt, becauſe he was fond of prelacy; and by the principal officers and a ſmall ſociety. But, in this trivial tranſaction, the coloniſts, with a ſpirit incident to a people whoſe paſſions are agitated, thought they ſaw the congregational form univerſally aboliſhed, and their favourite meeting-houſes either taken from them, or ſhut up.

The Quakers ſeemed now only to enjoy genuine freedom, while all others conſidered themſelves as enſlaved: And this fact ſeems alone to

evince,

evince, that liberty conſiſts rather in opinion, which every one forms for himſelf, than in any thing poſitive, which it is ſo difficult to define. Relying on the aſſurances held forth in the governor's commiſſion, but above all on the late declaration of indulgence to conſcience, this ſect refuſed any longer to contribute to the maintenance of their ancient perſecutors, the independent clergy. The property of the Quakers was ſeized: But, having appealed to the courts of juſtice for relief, what had been taken was ordered to be delivered back, becauſe the ſeizure was deemed contrary to the preſent ſyſtem.[96] Thus, for the firſt time, genuine liberty in religion flouriſhed in New-England. For it is in vain to talk of indulgence to conſcience, or of toleration, if men are diſtreſſed in any manner, becauſe they differ in ſentiment and in action from thoſe in power. What a ſpectacle does the adminiſtration of Andros hold up to mankind for their inſtruction: Under a form of government, plainly arbitrary and tyrannous, more real liberty was actually enjoyed than under the boaſted ſyſtem, which appeared ſo fair, which had been defended with enthuſiaſtic ardour, and was now ſo much deplored!

To be relieved from all their oppreſſions, real or ſuppoſed, which they felt more acutely when they reflected on what they had loſt, the coloniſts ſent Mather, an eminent miniſter and politician of thoſe days, to England, in April, 1688, in order "to make their moan and "complaint to his excellent majeſty;" flattering themſelves that they might poſſibly procure at leaſt partial redreſs. Though that truſty meſſenger "embarked in the night and in diſguiſe," neither his voyage nor his intentions eſcaped the ſagacity of Randolph, who now acted as ſecretary, in reward of former ſervices. He gave notice to the miniſters of England of his deſigns, of his peculiar attachments, of his late connexions with the popular party, with Shafteſbury, and Ferguſon, and Oates: And he forewarned them of his future intrigues, which were thus diſappointed, becauſe they were expoſed to the view of thoſe with whom he was to act.[97]

While James II. with an infatuation which occaſioned his own ruin and entailed numberleſs ills on his poſterity, purſued a variety of plans for raiſing his arbitrary will above the laws in England, he extended, in the

the mean time, his aims even beyond the Atlantic. No barriers, whether erected by grants from his predeceſſors, by ancient forms, or by the common-law, were ſufficient to ſtop his progreſs. And he iſſued, in the year 1687, writs of quo-warranto, to vacate the charters of the ſeveral proprietors and corporations of the colonies. But, beſides that he wiſhed to reduce their governments to ſimple ſyſtems, though at the expence of the rights of his ſubjects, he meditated other and more ſalutary projects. His reign is remarkable for being the epoch of the open encroachments of France on the American territories of England. Then was Canada puſhed to the ſouthward of the lake Champlain; then were fortreſſes erected within the immenſe foreſt which at that time divided it from New-York and New-England. That monarch, with a ſpeculative wiſdom which he was ſeldom able to carry into practice, adopted the policy of uniting all the colonies, from the banks of the Delaware to the ſhores of Nova-Scotia, into one province: Giving a reaſon worthy of a king of England; "that, beſides other advantages, it will be terrible to the French, "and make them proceed with more caution than they have lately "done."[98] Men of diſcernment remarked: That, while he was aſſiſted with French money and troops, to give ſucceſs to his arbitrary and illegal meaſures in Great-Britain and Ireland, James effected meaſures for limiting the power of France in America. At the ſame time, however, that he appointed commiſſioners to ſettle the diſputed boundaries of the two nations in America, which, however deſirable, had been always neglected, becauſe neither acknowledged principles nor facts could be aſſigned, he gave orders to Andros to cultivate a good correſpondence with the French, to prevent hoſtilities, but to protect the five nations of Indians. And that governor punctually obeyed his orders, and made an advantageous peace for the tribes. As no power now remained to oppoſe the will of the prince, it was determined to ſuperadd to the juriſdiction of the four colonies of New-England, New-York and the Jerſeys. A new commiſſion was accordingly paſſed in March, 1688, appointing Andros captain-general and vice-admiral over the whole. And Francis Nicholſon, who afterwards became ſo conſiderable in colonial annals, was ſoon after named his lieutenant with the accuſtomed au-

thority. The powers with which both were inveſted were exactly ſimilar to thoſe of his former inſtructions and commiſſion." And the conſtitution, eſtabliſhed on that occaſion, was a legiſlative and executive governor and council, which were appointed by the king without the aſſent of the people. They iſſued edicts and impoſed taxes; they enforced the former and collected the latter. Aſſemblies, wherein the coloniſts ought to have been preſent by repreſentation and concurred in the eſtabliſhment of rules which were to bind all, becauſe all conſented, were now no longer convened throughout one half the colonies. Thus a ſyſtem, unconſtitutional and arbitrary, depreſſed, during the remainder of that reign, an unfortunate country, which was deprived even of the ſcanty alleviation of the miſerable, the power of complaining to its neighbours and to the world; ſince freedom of printing was equally involved in the general ruin. Yet, though actual oppreſſion did not probably fall heavy on the inhabitants, they were equally enſlaved; becauſe they deemed the whole unqueſtioned rights of the ſubject as not only endangered, but gone: So deciſive is opinion in all things, even in oppoſition to ſubſtantial enjoyment.

The moment Mather arrived in England, he preſented to James what was very graciouſly received, "the addreſs[100] of ſeveral congregations;" offering cordial thanks for his unparalleled grace in ſecuring their liberty of conſcience, by his late happy declaration of indulgence: Thus flattering the inconſiderate folly of their prince at the greateſt price which freemen can pay, the ſacrifice of their own rights, and together with them the laws. Having now ſecured a favourable attention, he preſented a petition of the diſſenters of New-England, complaining of hardſhips; and begging, with a ſtrange inconſiſtence, for a grant of liberty of conſcience, of ſecurity to property. But, while they may have gratified the prejudices of the king, by ſpeaking harſhly of the church of England, which they hated, becauſe it was ſtruggling into exiſtence at Boſton, they offended the prepoſſeſſions of his miniſters. And they thought it prudent to withdraw an application which had rather adminiſtered cauſe of diſguſt than enſured ſucceſs or approbation. Yet Mather was too zealous to deſpair."[101] Being joined by ſeveral other perſons from New-England, who were equally intereſted, and being animated by the favour of father Peters, the

the royal confeſſor, whoſe good opinion and aid had been in the mean time dexterouſly gained, they not long after preſented a petition to that monarch, with various propoſals on behalf of their country.[102] But what muſt have at once ſtruck every one, who had ever peruſed the commiſſion of Andros, inſtantly appeared to the council for colonies, that every thing prayed for had been already eſtabliſhed under the preſent ſyſtem, if we except only the requeſt for an aſſembly, in which the people might be repreſented. And though Powis, the attorney-general, who had been alſo gained by ſimilar means, reported in favour of the meaſure, the miniſters ſaw no cauſe to grant what the petitioners in truth already poſſeſſed. But theſe men ſtill hoped to gain ſomething, that might gratify their countrymen, from perſeverance. And they preſented a repreſentation to the lords of the committee in October, 1688,[103] praying for their favourable report, "that, till his majeſty ſhall be pleaſed to grant an aſſembly, the council "ſhould conſiſt of conſiderable proprietors of land from every county, "without whoſe conſent no laws ſhall paſs." But however modeſt theſe deſires may now appear, they could not prevail, ſays their hiſtorian, in the reign of James II. The views of all being now fixed on a momentous object, little attention was probably paid to a prayer, however reaſonable, which was loſt in the general expectation. In this extremity ſeveral aged perſons of New-England "made their moan and complaint" to the king; ſtating their grievances, and praying for a confirmation of their poſſeſſions. And that prince, who now, in the height of his infatuation, acted without the advice of his official counſellors, fully conceded what was prayed for with ſo much anxiety.[104] But they ſhewed that they were unworthy of his bounty, becauſe they proved ungrateful. Both the agents and hiſtorians of New-England have carefully concealed, that James II. humanely granted to the prayers of his ſubjects what had been ſteadily refuſed by his miniſters.

In the mean time, Andros, in purſuance of his commiſſion and inſtructions, annexed to his government not only Connecticut, but New-York and the Jerſeys. He eſtabliſhed Nicholſon his lieutenant-governor at New-York, who, with part of the council, were empowered to take charge of theſe colonies. He appointed various judges to go through this

extenſive dominion, and to adminiſter juſtice to the people, according to the laws of England and their local uſages. And a very conſiderable revenue was raiſed under the authority of an edict of the legiſlative council before-mentioned, for the ſupport of government. He held a treaty with the ſix confederated tribes at Albany, who gladly promiſed ſubmiſſion to his government, becauſe they derived conſiderable advantage from his vigour. He tranſmitted to the governor of Canada a remonſtrance, couched in the ſtrongeſt language, againſt the French encroachments upon the hunting-grounds of the Indians and the territories of England. And owing partly to this animated meaſure, but more to the diſtreſſes of the Canadians, the fort at Niagara was ſoon after evacuated. Happy, had ſimilar meaſures been purſued, at all times, with a ſteadineſs in proportion to the importance of them![105]

While Andros was laudably buſied in defending the ſouth-weſtern frontiers, and promoting their quiet, the eaſtern provinces were diſturbed by an irruption of the neighbouring Indians. New-England had now cauſe to regret the reſtitution of Acadie to France. The preſent diſturbances aroſe not only from the intrigues of this nation, but from the imprudence of the people. The governor, with a ſpirit which does him honour, had endeavoured to win the tribes "by good words "and ſmall courteſies;" ſuppoſing, juſtly, that they had been "treated "with too great ſeverity, if not injuſtice," by the former government. The loſs of a few cattle being attributed, as uſual, to the Indians, a juſtice of peace, of more zeal than prudence, immediately ſeized thoſe whom he conſidered as the aggreſſors. Repriſals were made with equal promptitude. And thus the war commenced in ſummer, 1680. Its furies were for ſome time mitigated by the good ſenſe of the governor, who ordered the captives to be ſet at liberty. The tribes paid a proper compliment to his humanity, by following his example. But he commanded them, in vain, to deliver up the guilty perſons to puniſhment; becauſe they held it as a maxim, that all puniſhment is unworthy of freemen and warriors. Hoſtilities continued, becauſe both ſides were confident of their own rectitude, and of their own power. While various rumours were ſpread againſt Andros, which were eaſily credited,

becauſe

becauſe they reflected on the men they hated, he ſpeedily raiſed eight hundred men, and, in November, 1688, "marched at their head, "through froſt and ſnow," againſt the enemy. But, while the minds of a people are greatly agitated, they deride every meaſure which their rulers purſue for their ſafety. His opponents accuſed him of a deſign "to ſtarve "or freeze" the ſoldiers; though the more candid acknowledged, that he fully ſhared in their hardſhips and dangers, and treated them with a humanity worthy of a good general. At his approach, the Indians, with their uſual policy, retired into their faſtneſſes. But, by the eſtabliſhment of garriſons, by detaching numerous parties to attack their ſettlements and to deſtroy their ſcanty proviſions, he reduced them to the greateſt diſtreſs, and ſecured the country committed to his charge.[106]

During the winter that the governor remained on the frontiers, exerting all the arts of a wiſe officer to erect a ſufficient barrier againſt the peculiar attacks of a bold and crafty enemy, a train was laid, which, not long after, laid his adminiſtration in ruins. Tidings of the Revolution no ſooner reached Boſton, in April, 1689, than the flame which had been ſo long ſmothered, which had been carefully fanned by the agents in England, burſt out into inſurrection. The governor, with the ſpirit of the man, at firſt thought of making reſiſtance; but, finding the whole country in arms, he deemed it prudent to ſurrender the government into the hands of the inſurgents. He, with other officers and obnoxious perſons, were inſtantly ſeized and impriſoned. And they remained in confinement till, upon an application to William, they were ſent to England in conformity to his orders, "to "anſwer before him what might be objected againſt them."[107] The government being thus diſſolved, naturally fell into the hands of the moſt active promoters of the Revolution, who inſtantly aſſumed the conduct of affairs under the name of "a committee of ſafety." In order to juſtify their proceedings they publiſhed ſoon after a declaration, finely calculated for the times, and the men to whom it was addreſſed. They inveighed: That the deprivation of their civil privileges was merely the forerunner of the loſs of their religious liberties, as appeared by the diſcovery of a horrid popiſh plot; that they would have been moſt inſenſible,

if

if they had not thought a country ſo remarkable as New-England is for the true profeſſion and pure exerciſe of the proteſtant religion was wholly unconcerned in the infamous plot; that the vacating of their charter, the hedge which kept them from the wild beaſts of the field, was the firſt ſtep towards the accompliſhment of the deſolation projected for them; that, during the adminiſtration of Sir Edmond Andros, equally illegal and arbitrary, they had beheld, with fears and ſighs, the wicked walking on every ſide, and the vileſt men exalted, to be relieved from which they had applied to the king in vain; that they had underſtood how God had been pleaſed to proſper the noble undertaking of the prince of Orange, to preſerve the three kingdoms from the horrible brinks of popery and ſlavery, and they ought now to follow the pattern which the people of England had ſet before them, though that country chiefly propoſed to prevent what this already endured."[108] During the preſent ferment, the committee of ſafety called a general-court, in the ſubſequent May. After various debates, during which all parties concurred in the propriety of the preſent meaſures, it at length determined "to reſume "the government according to charter rights." This deciſive meaſure it declared to be correſpondent to the noble undertaking of the prince, in the ſettlement of the affairs of the renowned Engliſh nation. It reſolved; that there was an abſolute neceſſity for a civil government, without which the colony could not enjoy peace, ſafety, and tranquillity; that the method of the ſettlement of affairs at that juncture lay wholly in the voice of the people; that it is an undertaking allowed by our renowned prince, which he has given patterns of in the realm of England, on which we have a dependence, and to which we ſtand in ſo near a relation. No ſooner were theſe reſolves agreed on, which are equally remarkable for their deciſiveneſs and obſcurity, than it choſe a governor, a deputy-governor, and aſſiſtants, "according to ancient cuſtom:" And to them was intruſted the adminiſtration of government, "till orders "ſhould come from the higher powers in England."[109] But the prince and princeſs of Orange were not proclaimed; becauſe it was not in ſupport of their rights that the people had ruſhed to arms. As they had renounced their former allegiance, and had not renewed their ſubmiſſion

to

to any new ſovereign, they conſidered themſelves as the ſubjects of none, becauſe they did not regard the authority of England. And they now fully enjoyed that beloved independence, which their fathers had planted in the deſert, which had been watered with ſo much care, which had been defended with ſo much vigour, which they now ſupported at the riſque of every thing dear to men.

It was long before any directions with regard to public affairs arrived; becauſe Mather and Phips had obſtructed the tranſmiſſion of orders, with deſign to enſure the ſucceſs of their friends at Boſton. The ruling men, diſtruſting their own powers, guided the reins of government with feeble and unſteady hands; and all the diſorders and crimes, which neceſſarily reſult from anarchy, prevailed to a great degree. The governor and magiſtrates were at length relieved from their embarraſſments and apprehenſions, by receiving a letter from William, authorizing them to continue the adminiſtration in his name, "till he ſhould "give ſuch directions for the government, as ſhall moſt conduce to his "ſervice, and to the ſecurity of his ſubjects within that colony."[109] And being now fully inſtructed by their agents in the affairs of England, being informed of the final ſucceſs of the Revolution, and how much it behoved them to concur in that meaſure, William and Mary were proclaimed at Boſton, on the 29th of May, 1689, with greater ceremony than had ever been known in that colony.[110]

What a remarkable contraſt does the conduct of Maſſachuſets at that great æra form to that of the colonies of the ſouth! The inhabitants of Virginia and of Maryland at once proclaimed William and Mary king and queen of England, and the dominions thereto belonging; properly conſidering the right of kingſhip, to every territory of the crown, to reſult neceſſarily from their being declared by parliament the king and queen of the ſovereign ſtate; and acknowledging the transfer of their allegiance, without their conſent, to new rulers. But, though the people of Maſſachuſets ſpoke with deference of the higher powers in England, and of their relationſhip to it, they reſolved, with their peculiar ſpirit, that the ſettlement of government on that extraordinary occaſion belonged wholly to themſelves. Though they had heard of the ſettle-

ment

ment of the affairs of the Engliſh nation, upon which they admitted a dependence, yet, without regarding its conſtitution, they reſumed their former government according to charter rights: And, "the fears of "the people, of any bad conſequence from their late actions, being o-"ver," they at length proclaimed William and Mary, when they found that circumſtance eſſentially promoted their deſigns. In the coloniſts of the ſouth we ſee a juſt regard to their liberties as Engliſhmen, and to the laws of the ſtate: But, in the proceedings of thoſe of the north, we behold their characteriſtic principles breaking out; and their expreſſions of "dependence upon England, and relationſhip to it," were at that time what they have always been, mere words. For the eſſence of ſubordination is obedience.

AUTHORITIES AND NOTES.

[1] Hutch. hiſt. Maſſ. 1 v. 229; and ſee the collection of papers by Mr. Hutchinſon throughout. — [2] Ib. 230. — [3] See preamble of the commiſſion of inquiry. — [4] Record, Plant. Off. New-England, 1 v. p. 9-11. — [5] The privy-council referred it to the duke of York "to conſider of fit "men" as commiſſioners for New-England. Ib. p. 10. — [6] See the commiſſion in Hutch. 1 v. append. N°. 4. — [7] Ib. 229. — [8] Ib. 231-2. — [9] Ib. 233. — [10] See this curious letter in Hutch. append. N°. 17; and the collection of papers by Mr. Hutchinſon. — [11] See the proceedings of the commiſſioners in Hutch. 1 v. 233-256. — [12] Ib. 261-7. — [13] Record, New-Eng. 1 v. 21-2. — [14] See this letter; which is publiſhed in Hutch. 1 v. append. N°. 19. — [15] Ib. 253. — [16] Ib. 251-2. — [17] Social Compact, b. 4. ch. 2. — [18] Hutch. 1 v. 257. — [19] Hume's Eſſays, 1 v. p. 11-12. — [20] See D'Eſtrade's letters; and the papers publiſhed with regard to this ſubject in the memorials of the French court, made public ſubſequent to the peace of Aix-la-Chapelle. — [21] Hutch. Hiſt. 1 v. 260-8. — [22] See Governor Leveret's letter to the earl of Angleſey. New-Eng. Ent. Plant. Off. 1 v. p. 95: The revenue of the colony was then repreſented to be 20,000l. which was wholly at the diſpoſal of the general-court: But there is reaſon to believe that it did not amount to one half of this

ſum

ſum. Ib. 114-60-230. — [32] Ib. p. 61; and ſee the notices ſent to the general-court with regard to the controverſy with Gorges and Maſon; in the collection of papers by Mr. Hutchinſon throughout. — [34] New-Eng. Ent. 1 v. 111. — [35] The report of the two chief-juſtices, which ſee after in the chapter of New-Hampſhire and Main. — [36] New-Eng. Ent. 1 v. p. 222. — [37] Ib. p. 251. — [38] Hutch. Hiſt. Maſſ. 1 v. p. 327.

[39] Ib. p. 326-9: Governor Andros wrote from New-York, the 25th of March, 1679, to the committee of colonies, — "of the hard dealings "of Maſſachuſets with the inhabitants of Main;" — Journ. Plant. Off. 3 v. p. 26: In July, 1680, a petition was preſented to the lords of the committee from ſundry inhabitants of Main, complaining — "of hard-"ſhips put on them by the government of Maſſachuſets." Ib. p. 204-326-9.

[30] See the Hiſtory of the colonies of the free ſtates of antiquity, throughout. — [31] Hutch. Hiſt. 1 v. p. 258-275-83. — [32] Neal's New-Eng. 2 v. p. 376-406. — [33] New-Eng. Ent. 1 v. p. 114-60-249-253. — [34] Neal's New-Eng. 2 v. 409-10. — [35] Hutch. Hiſt. 1 v. 269. — [36] New-Eng. Ent. 1 v. p. 54.

[37] The ſubſequent extracts of the relation of Captain Cleyborne of the Garland frigate, who was at Boſton in the year 1673, diſcloſes ſeveral particulars of the œconomy of Maſſachuſets, with regard — to its commerce — to its conduct during the Dutch war — to its political principles — to the cauſe of the Indian war. — From New-Eng. Ent. 2 v. p. 54.

The trade of New-England is very great to all parts. It hath become a magazine of all commodities. Ships daily arrive there from Holland, France, Spain, &c. bringing with them the productions of theſe countries. He required the ſeizure of a ſhip from Oſtend; but the magiſtrates anſwered, that they were his majeſty's vice-admirals in thoſe ſeas, and would do what ſeemed good to them.

That many Engliſh ſailors having ſheltered themſelves in New-England during the Dutch war, he applied to have them ſent home; but the magiſtrates exaſperated a mob againſt him.

That he found the diſpoſition of the people in general good, and inclined to a ſubmiſſion to his majeſty's government; but wiſh for a viceroy.

That the oppreſſion of the Maſſachuſets government was the true cauſe of the Indian war: It makes laws to puniſh the Indians, which it rigorouſly executes.

That, when New-York was taken during the ſecond Dutch war, he ſolicited the aſſiſtance of the general-court to retake it; offering his own ſhip, and aſking a few ſailors, ſoldiers, and proviſions: But it declined; ſaying, that it would contribute its endeavours, provided the conqueſt might be added to Maſſachuſets; and, if that were refuſed, it would rather that Manhattans remained in poſſeſſion of the Dutch than it ſhould be put into the hands of Colonel Lovelace, the former governor. And he adds, that the magiſtrates of Maſſachuſets conſider themſelves as a free ſtate.

Remark. This relation is to be peruſed with caution; becauſe the captain had been publicly inſulted.

The annexed paper, intitled, "Obſervations made by the curious on "New-England, about the year 1673," which was given to Randolph for his direction, that he may prove or diſprove them, ſhews — the probable extent of its populouſneſs — of its ſhipping — of the numbers and wealth of the merchants — its general condition. — From New-Eng. Ent. 2 v. p. 103-5.

	M.	
There are about	120	ſouls.
	13	families.
	16	that can bear arms.
There are	12	ſhips of between 100 and 200 tons.
	190	ditto - - - - - 20 and 100 ditto.
	500	fiſher-boats - - - - about 6 ditto.
There are not	12	ſhips of 200 tons each.
	500	fiſhing-boats.

There be five iron-works, which caſt no guns.

There are fifteen merchants, worth about 50,000l. or about 500l. one with another.

500 perſons, worth 3000l. each.

No

No houſe in New-England has above 20 rooms. Not 20 in Boſton hath 10 rooms each.

About 1500 families in Boſton.

The worſt cottages in New-England are lofted.

No beggars.

Not three perſons put to death for theft [annually.]

About 35 rivers and harbours.

About 23 iſlands and fiſhing-places.

The three provinces, of Boſton, Main, and New-Hampſhire, are three-fourths of the whole in wealth and ſtrength; the other three, of Kennecticut, Rhode-Iſland, and Kennebeck, being but one-fourth of the whole in effect.

Not above three of their military men have ever been actual ſoldiers; but many are ſuch ſoldiers as the artillery-men at London.

Among the magiſtrates the moſt popular are
- Leveret, the governor.
- Major Denniſon.
- Major Clarke.
- Mr. Bradſtreet.

Among the miniſters
- Mr. Thatcher.
- Mr. Oxenbridge.
- Mr. Higgenſon.

There are no muſicians by trade.

A dancing-ſchool was ſet up; but put down.

A fencing-ſchool is allowed.

All cordage, ſail-cloth, and nets, come from England.

No cloth made there worth 4 s. a yard.

No linen above 2 s. 6 d.

No allum, nor copperas, nor ſalt, made by their ſun.

They take an oath of fidelity to the governor, but none to the king.

The governor is choſen by every freeman.

A freeman muſt be
- orthodox.
- above 20 years old.
- worth about 200 l.

[38] See the petition from the mercers and silk-weavers, from the merchants who trade to New-England, and the proceedings on them. — New-Eng. Ent. 2 v. p. 85-108-10. — [39] Com. Jour. 9 v. throughout. — [40] Sir John Dalrymple's Memoirs. — [41] Hutch. Hist. 180-269; and Randolph's Relation. New-Eng. Ent. 2 v. 114-60. — [42] Journ. Plant. Off. 1 v. p. 101-2-4-9-291. — [43] Hutch. Hist. 1 v. p. 311-29. — [44] New-Eng. Ent. 1 v. p. 82. — [45] Hutch. Hist. 1 v. p. 311. — [46] Jour. Plant. Off. 2 v. p. 89-90. — [47] Ib. p. 97. — [48] Ib. p. 262-3.

[49] The following extracts of the answers of the agents, Stoughton and Bulkley, to the inquiries of the committee of colonies, which were delivered in April, 1678, not only contain a general account of the policy of Massachusets, but display the talents of the agents at a time when the general-court complained, "that it had no meet instruments." — From N. Eng. Ent. 1 v. 284-95.

1. The standing council of Massachusets consists of the governor, deputy-governor, and magistrates; who transact matters in the absence of the general-court.

2. The general-court consists of the governor, deputy-governor, magistrates, and freemen, as by the patent is granted and constituted; who have the power of making laws, which every one must obey.

3. A single magistrate may determine causes under forty shillings value; from him lies an appeal to the county-court, which sits at stated times, and holds plea of all actions, civil and criminal, where the punishment extends not to life or banishment; from it lies an appeal to the court of assistants, which consists of the governor, deputy-governor, and assistants, which sits twice a year, and holds plea of all actions; but from it lies an appeal to the general-court.

4. Cases of admiralty are decided by the court of assistants.

5. The boundaries of the colony extend in longitude from sea to sea; the latitude depends upon the rivers Merrimack and Charles; and by the late decision there may prove a retrenchment of about sixty miles on the sea-coast.

6. Foreign merchants we know of none. The number of English merchants is very small; and of the other inhabitants, who are chiefly planters,

planters, we know of no calculation that hath been made. New planters have rarely come over for many years paſt; much leſs Iriſh or Scotch, or any foreigners: Nor are any blacks imported.

7. The eſtates of the planters in general are very mean; conſiſting chiefly of wilderneſs lands and of ſome ſtock. There are very few merchants who have conſiderable eſtates: We are confident, that there will not be found above twelve or fourteen worth each 5,000l. and not half of theſe worth 10,000l. a piece.

8. A conſiderable number of ſmall veſſels are built in the country under a hundred tons burden; but thoſe that are larger belong to owners in England, or to other colonies.

9. There are three principal diſcouragements upon the trade and navigation of New-England. 1ſtly. Though it receives its neceſſary ſupplies from England, and *the merchants take great care to make good returns thither*, yet its commodities being chiefly fit for foreign markets, few can be immediately ſent to England. 2dly. When they trade with the other colonies, and procure greater ſupplies than needful at home; yet ſuch is the ſtate of the trade, that they cannot return the product of thoſe colonies directly to England from the place of their growth, but muſt ſend them from New-England; whereby the charge of freight is much increaſed; and, when landed in England, the king's duties upon thoſe goods are paid over again, notwithſtanding the payment of them before, when firſt ſhipped in the plantation: 3dly. When the New-England people ſend their fiſh and ſtaves *(not proper for the markets of England)* to foreign parts, and procure ſalt, *(a free commodity,)* yet, if they take any other goods, as wine, oil, fruit, for their own neceſſary uſe, *(not to ſupply the other colonies,)* they are obliged to come to England and pay his majeſty's duties.

10. For the encouragement of the trade of New-England, it is at preſent only propoſed, as a thing that would much conduce thereto, and would be moſt thankfully and joyfully accepted: 1ſtly. That, when the merchants have once paid the duties, for the product of the other colonies which they carry to New-England, becauſe they cannot give bond to bring them directly to England, they may be freed from paying the duties a ſecond time, when ſuch goods are imported to England:

2dly.

2dly. When they export their fiſh and ſtaves to foreign countries, they may have liberty, together with ſalt, to bring back ſuch other goods of thoſe parts as New-England wants for its own uſe, *(which would not be much,)* without coming firſt to England; *they being moſt willing to pay all his majeſty's duties upon their arrival in New-England.* [Which taxes had been impoſed by act of parliament.]:

11. There is nothing impoſed on goods exported from Maſſachuſets; but merchandiſes imported pay a penny a pound of the value, except ſalt, wool, fiſh, &c. Wines and brandy have a peculiar duty on them. Each veſſel which arrives pays a ſmall tax for the maintenance of the fortification. [Which cuſtoms had been impoſed by the general court, though it was not empowered by the patent, though the Britiſh merchants, who chiefly paid them, were not repreſented in that legiſlature.]

12. The doctrines of religion fully agree with the church of England; but the diſcipline and government are congregational.

[50] See Randolph's repreſentation, which is very intelligent and voluminous, in N. Eng. Ent. 1 vol. p. 114-60: — It is printed in the collection of papers, made by Mr. Hutchinſon, with regard to Maſſachuſets, though that very intelligent gentleman ſeems to doubt, without reaſon, the authenticity of it. The lords of the committee of colonies diſtruſting Randolph's reports, becauſe they appeared ſo extraordinary, ſent his papers to Lord Culpeper, the governor of Virginia, who had called at Boſton on his voyage to England, who anſwered, in Auguſt, 1681: "I have peruſed Mr. Randolph's writings ſent me, and, "during my ſtay at Boſton, did hear moſt of the matters of fact ſpecified therein: He added; "that the coinage of New-England was greatly "prejudicial to the king's ſubjects." — N. Eng. Pap. vol. 2. p. 220.

[51] The annexed letter, from the committee of plantations to the crown-lawyers, with their anſwer, ſhews the opinion of both with regard to the objections which were made againſt the charter in thoſe days. — From New-Eng. Ent. 2 v. p. 265-6.

Gentlemen,

The lords of the committee of trade and plantations, having entered into a very ſerious conſideration of what concerns his majeſty's ſervice in New-England,

New-England, have commanded me to ſignify their deſires, that you would forthwith examine the grounds of what hath ſome time been objected before them.

Objections.

1ſtly. That the people of the Maſſachuſets colony have not any legal charter at all.

Anſwers.

1ſtly. The firſt matter propounded to us, being, whether the patent of 4° Car. were, in point of creation, a good patent? We do find that his majeſty's two chief-juſtices, upon hearing counſel on both ſides, have given their opinion to their lordſhips, that the ſame patent was good in point of creation, notwithſtanding the objection, that the patent to the company of Plymouth was then in being. And, although it is repreſented to us, that the caſe was not truly ſtated to them, yet, it being upon hearing of counſel and parties, we humbly ſubmit it to your lordſhips, whether it can be ſatisfactory to your lordſhips or the parties to have our opinion, or rather, whether the caſe ſhould not be truly ſtated to the ſame chief-juſtices, to have their opinion thereupon.

2dly. That, by reaſon of ſeveral irregularities, there was, about the year 1635, a quo-warranto brought for the diſſolution of ſuch charter as they had. That the proſecution thereof went far, and ſtopped only on account of the public troubles enſuing.

2dly. Upon view of a copy of the record of the quo-warranto, we find, that neither the quo-warranto was ſo brought, nor the judgement thereupon ſo given, as could cauſe a diſſolution of the ſaid charter.

3dly

3dly and laſtly. Suppoſing that the charter were originally good, their lordſhips deſire to know, whether the corporation have, by maladminiſtration of their powers, or otherwiſe, forfeited the ſame, ſo as to be now in his majeſty's mercy and diſpoſal.

3dly. As to the miſdemeanours objected againſt the corporation of the Maſſachuſets, in New-England, in managing their patent, we are of opinion, that, if the ſame can be proved to be true, and that they were committed ſince the act of oblivion, they do contain ſufficient matter to avoid the patent, but that cannot be otherwiſe done than by a quo-warranto, &c.

Wi. Jones.
Fr. Winnington.

The lords have appointed Mr. Randolph to attend you with ſeveral matters of fact. And, becauſe the affair will be of much conſequence, your very particular conſideration is deſired herein, and a ſpeedy report of your opinion upon the whole caſe.

To Mr. Attorney and Solicitor General.

I am, &c.

[51] Journal, 2 v. 232.

[51] The following extracts exhibit the full reſult of the deliberations of the committee of plantations, with regard to the dependence of New-England, which was delivered to its agents in April, 1678. — From N. Eng. Ent. 2 v. p. 241.

1ſtly. That the general-court ſhould confine itſelf to ſuch boundaries, with regard to the extent of ſoil and juriſdiction, as had been reported by the judges.

2dly. That, unleſs it would freely yield the property of the ſoil in the province of New-Hampſhire and Main, his majeſty would appoint a third authority to determine the ſame.

3dly. That though his majeſty may, upon due application, grant the colony a charter, with power of coining, yet they muſt ſolicit his majeſty's pardon.

4thly. That the acts of navigation for the future be rigidly obſerved.

5thly.

5thly. That the general-court ſhould allow no laws repugnant to thoſe of England.

6thly. That the charter ſhould be inſpected, and the general-court ſhall in future adminiſter ſuch power only as is therein given.

7thly. That no taxes ſhould be raiſed but with his majeſty's approbation, in his name, and applied by his appointment to the uſe of the government. And, above all, that the method of ſwearing all to be true to that government ſhould be aboliſhed.

8thly. That the many repugnancies, found by Mr. Attorney in their laws againſt thoſe of England, ſhould be all repealed.

9thly. That the principles of the general-court were faulty, in raiſing taxes on the king's ſubjects who traded thither, over whom it had not the ſame power as over the members of the corporation; which it muſt amend.

Upon the whole matter, their lordſhips ſeem very much to reſent, that no more notice is taken, in New-England, of what was ſo freely, and with ſo much ſoftneſs, intimated to the agents: And they are ſo far from adviſing his majeſty immediately to grant the colony a pardon, much leſs the acceſſion of government of the country claimed by Mr. Maſon, which the agents had petitioned for, that they are of opinion, that this whole matter ought ſeverely to be conſidered from the very root. For, if fair perſuaſions will not take place, neither will they take notice of commands that are ſent, if nobody be there on the place to give countenance to his majeſty's order, and truly to repreſent from that country what obedience is given to them. Agreed that it muſt be by a governor wholly to be ſupported by his majeſty; and that ſuch a governor many of the people there did languiſh after. But referred to Mr. Attorney and Solicitor, to conſider whether his majeſty is at liberty to do herein as may be required.

[54] New-England Ent. 2 v. 276-7.

[55] The following letter from the committee of plantations, dated 10 March, 1678-9, to Lord-Treaſurer Danby, exhibits a very ſtriking picture of the embarraſſments of the miniſters of England, and of the dif-

ficulties which occurred in eſtabliſhing the firſt revenue-officer at Boſton. — From New-Engl. Ent. 2 v. p. 280.

"We have received intimation, from Mr. Chancellor of the Exchequer, that your lordſhip deſired our conſideration of a paper preſented by Mr. Randolph, containing ſeveral heads which concerned the better execution of his employment of collector, ſurveyor, and ſearcher, in New-England, and how the charges incident to thoſe offices might be ſupported, otherwiſe than from his majeſty's exchequer; and alſo how the ſaid Mr. Randolph might be armed with authority ſufficient to carry him through the execution of the ſame. We have, upon this occaſion, reflected what hath happened in New-England ſince his majeſty's reſtoration, and do find, not only by the affronts and rejections of thoſe commiſſioners which his majeſty ſent out in 1665, but by the whole current of their behaviour ſince, that, until his majeſty ſhall give thoſe his ſubjects to underſtand, that he is abſolutely bent upon a general reformation of the abuſes in that government, we cannot hope for any good from the ſingle endeavour of any officer that may be ſent, but rather contradiction and diſreſpect in all that ſhall be endeavoured for his majeſty's ſervice, if they will but call it an infringement of their charter. Nor can we think how any the charges incident to thoſe employments, could they have any execution, can be otherwiſe ſupported than from his majeſty's exchequer. Wherefore, ſeeing there is now in preparation ſuch a general ſtate of that colony, and ſuch expedients to be offered his majeſty, as may bring it to a dependence on his majeſty's authority, equal to that of any other colony, which we think his majeſty's ſteady reſolution may effect; we therefore leave it to your lordſhip's conſideration, whether it be not beſt to ſuſpend the departure of any ſuch officer, until there be a final reſolution taken in this matter. And ſo, &c.

Eſſex, Bridgewater, Northampton,
Craven, Ailſbury, Sunderland,
G. Carteret, J. Ernlé, Clarendon.

[56] Hutch. 1 v. 319-20. — [57] Ib. 319-22. — [58] Record of New-England, 2 v. 40-2. —— The ſubjoined extract of a letter, from Governor Nicholſon

Nicholſon of Maryland, who was extremely intelligent, to the Board of Trade, dated in Auguſt, 1698, demonſtrates, that the opinions of New-England, twenty years before, with regard to the authority of acts of parliament, had become general in the colonies. — From Record, Maryland, A. p. 335.

" I have obſerved, that a great many people in all theſe provinces and colonies, eſpecially in thoſe under proprietaries, and the two others under Connecticut and Rhode-Iſland, think that no law of England ought to be in force and binding to them without their own conſent: For they fooliſhly ſay, they have no repreſentatives ſent from themſelves to the parliament of England: And they look upon all laws made in England, that put any reſtraint upon them, to be great hardſhips."

REMARK. The famous declaratory act of the 7 and 8 of William III. ch. 22. had been paſſed juſt two years before, in 1696: Molyneux's Caſe of Ireland, aſſerting publicly the ſame doctrines, was firſt publiſhed in February, 1697-8.

[59] Journal, 3 v. 9-10-70. — [60] N. Eng. Ent. 1 v. p. 251. — [61] Hutch. Hiſt. 1 v. 330. — [62] N. Eng. Ent. 2 v. p. 40-2. — [63] Ib. 87-94. — [64] Ib. 83. — [65] Hutch. Hiſt. 1 v. p. 30-1.

[66] The lords of the committee for plantations, having waited expecting the effects of the obedience of the general-court to the king's commands, ſignified the 13th of September, 1680, and having received no other return but that of the 3d of June laſt, whereby it appeared that it had not ſent agents, offered the following letter, for the royal ſignature, in October, 1681, to be tranſmitted to the governor and aſſiſtants: And it is perhaps the moſt extraordinary one ever ſent by a ſovereign to his ſubjects; containing a ſketch of the hiſtory of the diſobedience of Maſſachuſets, as drawn by the then miniſters of England. — From the N. Engl. Papers, 3 v. N°. 138. and ſee the N. Eng. Ent. 2 v. p. 132.

C. R.

Truſty and well beloved, we greet you well. When, by the gracious favour of our royal predeceſſor, you obtained a charter, conferring unto you all that extent of land in New-England formerly granted by our great council of Plymouth, together with ſuch powers and authorities

as were thought neceſſary for the better government of our ſubjects at ſo remote a diſtance from this our kingdom, no doubt was then conceived, but, as nothing was denied which you then deemed requiſite for the full enjoyment of your property and the liberty of your conſcience, ſo you would always contain yourſelves within that duty which the bonds of inſeparable allegiance bind you to. But, it is with great trouble of mind, that we reflect on thoſe methods, which, from the very beginning of your plantation, you have not forborne to uſe, ſo much tending to the prejudice of our ſovereign right and your natural dependence upon the crown. No ſooner were you ſettled by the indulgence of our royal father, of bleſſed memory, but various complaints were brought over of your ill behaviour and contempt of the royal authority; and your miſdemeanours became ſo notorious, that, in the year 1635, a quo-warranto was brought againſt your company, and judgement paſſed, that the privileges and franchiſes of that corporation ſhould be ſeized into the hands of our royal father; who, in purſuance thereof, did order in council, that the attorney-general ſhould be required to call for it in and preſent it to the board, as plainly appears upon record.

What your comportment was, until our happy reſtoration, we will not mention. But, indeed, we were met with an addreſs from your general-court, containing many expreſſions of loyalty and affection to our government; but neither at that time did you give your agent ſuch inſtructions as empowered him finally to act on your behalf, or to agree to what then might have been propoſed for the better regulation of your government. But, as we have been always graciouſly willing to paſs over all thoſe faults, of which we could hope for an amendment, we immediately returned our royal letters unto you, conceived in all the terms our favourable diſpoſition towards you could expreſs. In the mean time we came to underſtand, that two of the murtherers of our royal father, of ever bleſſed memory, did not only find ſhelter amongſt you, but were openly treated and careſſed by the chief officers of our government; and, at the ſame time, complaints were preſented unto us, by ſeveral perſons, on behalf of themſelves and many thouſands of our ſubjects who groaned under your oppreſſion; being refuſed appeals unto us, and made ſubject

unto

unto laws abſolutely contrary to the laws of England; for remedy whereof they prayed for protection, and that a general governor might be appointed over them.

Another petition was preſented unto us by ſeveral merchants, complaining of great hardſhips from your company, whereby they had been endamaged many thouſand pounds. Others appeared before us, with evidences of their ſufferings and torture, and of the perſecution of others, even unto death, on the ſcore of conſcience only. Several perſons complain, that, after twenty-five years living, and ſome time governing, in the province of Main, they were violently diſpoſſeſſed of their rights and privileges, to their utter ruin. But no complaints have been of longer duration, and are rendered more remarkable by the continued violence and unreaſonable pretenſions of your government, than thoſe preſented unto us by Robert Maſon and Ferdinando Gorges, eſquires, whom you had, in a hoſtile manner, diſpoſſeſſed of a great tract of land, by virtue of an imaginary line; which, upon the report of our chief-juſtices, we diſallowed and wholly ſet aſide; for which injuſtice and oppreſſion, nevertheleſs, no reparation has been yet made to the proprietors. Addreſſes were alſo made us by the natives of that country, of breach of faith, and of acts of violence and injuſtice they had ſuffered from you.

Upon theſe motives, and other complaints of differences and diſputes touching the bounds of the ſeveral charters and juriſdictions of our colonies, as well as the neglect of our orders, contained in our royal letters, bearing date the 28th of June, 1662, we thought fit, in the ſixteenth year of our reign, to appoint certain commiſſioners to viſit, to hear and receive, examine and determine, all complaints and appeals, and to provide in all things for ſettling the peace and ſecurity of the ſaid country, purſuant to our inſtructions: And, accordingly, theſe our commiſſioners were received into the other colonies with all the ſubmiſſion and obedience that our commands did require; but found ſo different a reception within your government, as their reports inform us, that nothing could prevail with you to let them hear and determine thoſe particular cauſes which we had commanded them to take care of. And, in oppoſition to our authority, it was then proclaimed, by ſound of trumpet, within our

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town of Boſton, that the general-court was the ſupreme judicature in that province; and that the commiſſioners pretending to hear appeals was a breach of your charter; and a paper was alſo publiſhed, by order of court, to deter all perſons from making any complaints and appeals unto them; and many of our ſubjects were alſo impriſoned for applying to our commiſſioners: By which means our royal commiſſion and gracious intentions for the ſettlement of that our colony were then totally defeated.

Upon a full information, given us by our ſaid commiſſioners, of their fruitleſs endeavours to carry on our ſervice within that our colony, we could not but highly reſent the ill-treatment they had met with, and the contempt of our royal authority; and therefore, by our gracious declaration of April, 1666, we thought fit to recal our ſaid commiſſioners, and to charge and command you, among other things, to make choice of five or four perſons to attend us: But even theſe, and other our commands, contained in the ſame declaration, were ſo little regarded, though a court were called, and our pleaſure duly ſignified, that, after a ſolemn debate, it was agreed, that no perſon ſhould be ſent unto us, notwithſtanding our poſitive directions therein.

Matters reſted thus, without any one real inſtance of duty on your parts, nor did our aggrieved ſubjects find in the mean time any eaſe from your oppreſſions, by which their property was detained, and their ſufferings increaſed, until the year 1674, when the petition of Robert Maſon and Ferdinando Gorges, Eſq. were renewed unto us; and, after the examination of their complaints, we commanded you to ſend over agents to appear before us on your behalf.

During their attendance at our court, great and heavy complaints, beſides the particular caſes of the petitions above-mentioned, were brought againſt the adminiſtration of your government: And, at ſeveral hearings before us in council, and by the lords of our committee of trade and foreign plantations, your agents were made ſenſible of the great crimes you were anſwerable for in coining money, for which they therefore beſought our royal pardon. And it then appeared, by the petition of divers conſiderable merchants, by the reports of the commiſſioners of our cuſtoms,

and

and by other undeniable teſtimony, that an unlawful courſe of trade had for many years paſt been encouraged, and was yet countenanced by the laws and practice of that government, to the great diminution of our cuſtoms in England, violation of divers acts of parliament, and great prejudice of our ſubjects, who with unequal advantages contained themſelves within the rules which the law directs for the management of trade.

It was then referred to our attorney and ſolicitor general to examine your laws, many of which they marked out, to thoſe your agents, as repugnant to the laws of England, and contrary to the power of your charter, of which they promiſed an amendment; and divers other irregularities in that government were then mentioned to your agents, which they aſſured us would be ſpeedily redreſſed: And, upon their humble ſupplications to return home, we were graciouſly pleaſed to grant their requeſt, and then ſignified to you our pleaſure, by our letters, bearing date the 19th of June, 1679, that you ſhould chooſe ſuch other fit perſons, and ſend them over, within ſix months after the receipt of thoſe our letters, to attend us here in the regulation of your affairs, as well in reſpect of our royal dignity as of your own perfect ſettlement.

In anſwer whereunto, we firſt received a letter from you, dated the 22d of May, 1680, without any mention made therein of agents to be ſent purſuant to our commands, nor of ſeveral other particulars directed by our former letters, whilſt we were informed, that you yet continued the ſame hardſhips upon our ſubjects in their property, privileges, and conſcience: And though your other letter, dated the 12th of June following, gave us no better ſatisfaction, we were graciouſly pleaſed, nevertheleſs, by our letters, bearing date the 15th of September next enſuing, to renew our former admonitions, ſtrictly requiring and commanding you, as you tendered your allegiance unto us, ſeriouſly to reflect on our former commands, and particularly charging you, amongſt other things, to ſend over, within three months after the receipt of thoſe our letters, ſome fit perſon or perſons to attend the regulation of that our government; and, whilſt we were juſtly expecting a ſubſtantial return to ſo gracious an opportunity given you of anſwering the complaints

plaints brought againſt you, we underſtood, by your letter to our ſecretary of ſtate, dated the 3d of June laſt, that, inſtead of accepting our favour, you had only repreſented unto us ſome frivolous and inſufficient pretences, to excuſe your omiſſion of ſending agents, without giving us any direct teſtimony of your obedience in any other reſpect whatſoever.

We were alſo at the ſame time preſented with freſh complaints, that the ſeveral acts of parliament for the encouragement of trade and navigation are not duly obſerved within your juriſdiction: That, inſtead of encouraging our officers appointed in that behalf, you ſuffered attachments to be granted againſt them for doing their duty; thereby giving opportunity to irregular traders of compaſſing their frauds: That the ſaid officers, proſecuting offenders in our name, have been forced to depoſit ſeveral ſums of money before any trial at law could be obtained, and have been obliged to pay coſts after ſuch trials: That, although by the ſaid acts of parliament one moiety of the forfeiture is belonging unto us, you have nevertheleſs ſeized them into your own hands, without rendering an account thereof unto us: And that you have alſo denied appeals to be made to us.

All which being contrary to law and the rules of your charter, we do therefore expect that ſpeedy reſtitution be made of the money levied by you of our ſaid officers, and that an account be rendered unto us of all fines, forfeitures, and other profits, accruing unto us; as alſo that our officers be permitted, at all times, and without charges, to proſecute all ſuch as ſhall preſume to violate the acts of trade and navigation; and that appeals be permitted to be made unto us, and good ſecurity given, to anſwer our determination.

We are likewiſe given to underſtand, that the former reſtrictions in the choice of freemen and magiſtrates are continued among you.

That divers laws, repugnant to the laws of England, are kept in force.

That you preſume to continue your mint, without regard to the penalties thereby incurred.

That, notwithſtanding our pleaſure ſignified to you, that ſuch as deſire to ſerve God in the way of the church of England be not thereby made

made obnoxious or diſcountenanced by you, yet are they made liable to ſuch diſcouragements: Their children withheld from baptiſm, and the free exerciſe of religion, according to the church of England, impeded by you.

That, though your agents were often-times adviſed, at our council-board, that no taxes or cuſtoms were to be raiſed, but by our approbation, in our name, and by our appointment, to the uſe of our government there; yet have you not taken notice thereof, nor forborne to lay impoſitions upon perſons not free of your company, as alſo upon ſhips and goods arriving within your juriſdiction from other colonies; which is neither agreeable to law, nor conformable to your charter.

That you have exerciſed great exceſſes towards our ſubjects in our province of Main, and laid taxes upon them in an arbitrary manner, without making us acquainted with your proceedings in that government; which, by the expreſs words of our grant, derived unto you from Ferdinando Gorges, is ſubordinate and ſubject to the power and regulation of the lords and others our council for foreign plantations.

Theſe and many other irregularities, crimes, and miſdemeanours, having been objected againſt you, (which we hope nevertheleſs are but the faults of a few perſons in the government,) we find it altogether neceſſary for our ſervice, and the peace of our colonies, that the grievances of our good ſubjects be ſpeedily redreſſed, and our authority acknowledged, in purſuance of theſe our commands, and our pleaſure at divers times ſignified to you by our royal letters and otherwiſe, to which we again refer you, and once more charge and require you forthwith to ſend over your agents fully empowered and inſtructed to attend the regulation of that our government, and to anſwer the irregularity of your proceedings therein: In default whereof, we are fully reſolved, in Trinity-term next enſuing, to direct our attorney-general to bring a quo-warranto in our court of King's-bench, whereby our charter granted unto you, with all the powers thereof, may be legally evicted and made void: And ſo we bid you farewel, &c."

When the general-court diſcovered, not only from the tenor of the above remonſtrance, but from the private informations of its emiſſaries in England, that its ſyſtem of delay and expedient was no longer ſafe, becauſe it was no more practicable, it appointed Dudley and Richards its agents to repair to England: And, in Auguſt, 1682, they preſented the ſubjoined paper, which ſhews the defence that they thought proper to ſet up on behalf of their country, which will enable the diſpaſſionate of the preſent day to form a proper judgement of the controverſy between Charles II. and his opponents in Maſſachuſets.

Anſwers of the New-England agents, to matters charged againſt the colony of the Maſſachuſets-Bay. — From New-Eng. Papers, 4 vol. p. 165.

Charges.	*Anſwers.*	*Proofs.*
His majeſty's letter, of the 24 July, 1679, to the governor and company of the Maſſachuſets colony, requires: — 1ſtly. That agents be ſent over in ſix months, fully inſtructed to anſwer and tranſact what undetermined at the time.	To which the agents of the ſaid colony humbly anſwer: That the delay of ſending ſuch agents hath been occaſioned by the danger of the ſeas; Connecticut agent and ſeveral others having been taken by the Turks, and ranſomed at extreme rates. That the arrear of debt, by reaſon of the late war with the Indians, had ſo far impoveriſhed them, as to make them almoſt incapable of the expence of ſuch attendance.	This the agents know. And the debt of the colony was, at the receipt of thoſe letters, about 20,000 l.
2dly. That freedom and liberty of conſcience be given to ſuch perſons as deſire to ſerve God in the way of the church of England, ſo as not to	There is no law nor uſage there to bar the uſe of the Engliſh liturgy, nor have any perſons been obſtructed who deſired the ſame; nor is there any law to hinder any perſons of the church of England from being choſen into	New Engl. Laws, p. 56. The law, prohibiting all perſons, except members of churches, from

Charges.	*Anſwers.*	*Proofs.*
be made thereby obnoxious, or diſcountenanced from ſharing in the government. Much leſs that they, or any other of his majeſty's ſubjects, (not being Papiſts,) who do not agree in the congregational way, be by law ſubjected to fine or forfeitures, or to other incapacities, for the ſame.	the government, but the vote and ſuffrage of the people are free and without any reſtraint for ſuch, as well as any others.	from being freemen, is repealed. And the agents know the practice to be as in their anſwer.
	Whatever has been formerly, there is now no law put in execution againſt diſſenters but what is conſonant to the law of England, and of like force againſt thoſe of the congregational way as any others.	The agents know this to be true. Vid. Laws, fo. 45-67: — Meeting-houſes: — And abſence from meeting.
3dly. That no other diſtinction be obſerved in making of freemen, than that they be men of competent eſtates, rateable at 10s. according to the rules of the place; and that ſuch, in their turn, be capable of magiſtracy, and all laws to be made void that obſtruct the ſame.	There is no other diſtinction made in the making of freemen, than that they be freeholders of 10s. rateable eſtate, and of the proteſtant religion.	The Laws, p. 56, make out this.
	And all freemen are capable of being choſen to any truſt in the magiſtracy there; and all laws, obſtructing the ſame, repealed on his majeſty's particular commands for the ſame.	And men of the church of England are admitted freemen; as alſo all Proteſtants of 10s. rateable eſtate.
4thly. That the ancient number of eighteen aſſiſtants be	This was immediately done on his majeſty's pleaſure ſignified.	Law Book, p. 78.

Charges.	*Anſwers.*	*Proofs.*
henceforth obſerved; as by the charter.		
5thly. That all perſons, coming to any privilege, truſt, or office, take the oath of allegiance.	This is cheerfully obeyed.	Ib. 62.
6thly. That all military commiſſions, as well as the proceedings of juſtice, run in his majeſty's name.	This was alſo obeyed.	Ib. p. 75-6. Vid. The commiſſions.
7thly. That all laws, repugnant to or inconſiſtent with the laws of England for trade, be aboliſhed.	This is alſo fully obeyed.	Ib. pa. 58. The ſtrict obſervation of the acts of trade and navigation enjoined.
And the ſaid letter complains: 8thly. That, while Mr. Gorges's complaint was before the council, the agents of the ſaid colony, without his majeſty's permiſſion, who was ſome time in treaty for the ſame, bought Mr. Gorges's intereſt in the province of Main for 1200l.	To this they humbly offer: That the purchaſe of the province of Main was made by them not out of any diſloyal inclination, or intention to infringe his majeſty's royal prerogative, or to prevent his majeſty's taking the ſame into his own hands, but upon real deſire to accommodate his majeſty's ſubjects, the inhabitants of that province, and their own mutual peace and ſafety, and with good advice firſt had that they might do ſo.	

Wherein

Charges.	*Anſwers.*	*Proofs.*
	Wherein the reſpondents caſe ſtands thus:	
	In 1640 the now inhabitants, or thoſe under whom they claim, ſat down upon the lands in the province of Main, being then all a wilderneſs, buying out the Indians; and governing themſelves by common agreement.	
	When their families encreaſed, and diviſions growing among them, they grew uneaſy to themſelves, and prayed the Maſſachuſets to extend their government over them. And all of them ſubmitted the regulation and adjuſtment of their lands to the Maſſachuſets.	
	In 1657 a law was made for quieting poſſeſſions, that, where no claim had been made 5 years before, and ſhould not be made in 5 years after, the poſſeſſors ſhould quietly enjoy the land, ſo held by them againſt all claimers. P. 123.	
That his majeſty, even then, heard of ſome effects of a ſevere hand laid by the Maſſachuſets on his ſubjects there.	The Maſſachuſets in the laſt Indian war were at 10,000l. charge in defending the ſaid province, when moſt of it was laid waſte.	The agents know the truth of this caſe.
And his majeſty requires an aſſignment of the ſaid province	Mr. Gorges petitioned his majeſty, that he might have the ſaid province upon ſome dormant letters patents he had thereof; whereupon: — The then agent for the	

Maſſachuſets

Charges.	Anſwers.	Proofs.
of Main on repayment of the ſaid 1200 l.	Maſſachuſets colony bought Mr. Gorges' pretended title to the ſaid province for 1250 l. to no other end than to quiet the inhabitants in the poſſeſſions that they had improved with the expence of ſo much ſweat and coin, and preſerved with their blood, without taking one farthing from them for it. So that the Maſſachuſets, by their purchaſe, could deſign no more than a generous charity; ſince, to have bought a litigated title with intent to have proſecuted a recovery therein, had been champerty, and puniſhable by the laws of England: Of which purchaſe what aſſignment can they make which can benefit any aſſignee, but what were unlawful to be taken, and muſt be deſtructive of the pious and charitable end now effected?	
	That, it not being intimated what effects of a ſevere hand, hinted to have been acted by the Maſſachuſets againſt his majeſty's ſubjects there were, they cannot make any anſwer thereto.	
And requires: — 9thly. That, as for that part of New-Hampſhire province,	That was readily obeyed, and a new governor was admitted, without any heſitation.	This the agents know to be true.

three

Charges.	*Anſwers.*	*Proofs.*
three miles northward of Merrimack-river, granted to Mr. Maſon, the government of which remained inveſted in his majeſty, his majeſty deſiring to ſettle the ſame to the ſatisfaction of his ſubjects there; that the Maſſachuſets recal all commiſſions granted by them for governing there.		
His majeſty, by letter of the 13 September, 1680, complains:		
1ſtly. That few of his directions in his former letter had been purſued by the general-court in New-England, and that the conſideration of the remaining part of them were put off on inſufficient pretences.	That their delay, or ſlowneſs of procedure, proceeded not from any want of allegiance or doubt of giving his majeſty all ſatisfaction therein, nor was it any diſadvantage to any his majeſty's ſubjects there for whoſe avail the ſaid complaints were made; but that they might proceed with ſatisfaction amongſt themſelves.	
And that the ſending agents within ſix months after the ſaid former letter, with full inſtructions to attend	Which is ſince brought to paſs.	

Charges.	*Anſwers.*	*Proofs.*
tend his majeſty's pleaſure in relation to the ſaid government, had been wholly neglected.		
2dly. That Mr. Maſon, claiming a tract of land between Merrimack and Neamkeck rivers, by grant of the 19th of king James; whoſe right had been ſettled, had not the agents, from New-England, ſuſpended the determination thereof until new agents came, empowered to defend the inhabitants right thereto.		
His majeſty commanded: — That agents ſhould, in three months after the receipt of that letter, be ſent over, and authorized to attend the regulation and ſettlement of that government: And, that Maſon's complaint might	This, we believe, his majeſty hath given order ſhall be firſt tried upon the place.	
	And a public ſignification to the ter-tenants was forthwith	This appears by an addreſs from

Charges.	*Anſwers.*	*Proofs.*
be then determined, thoſe agents ſhould come prepared, not only to ſhew ſuch evidence of right as the ſaid company had to the ſaid ſoil claimed by Maſon, but ſhould make public ſignification of his majeſty's pleaſure to the inhabitants and tertenants of the ſoil; that they might furniſh thoſe agents, or whom they ſhould depute, with the proofs of their titles to the lands poſſeſſed by them; that they might make their full defence before his majeſty in council.	made by his majeſty's government the	from the inhabitants.
3dly. That, on receipt of the ſaid letter, a general-court ſhould be forthwith called, and the letter read therein, and proviſion made for his majeſty's ſpeedy ſatisfaction in the premiſes.	Done.	This the agents know.

Charges.	*Anſwers.*	*Proofs.*
His majeſty, by letter of 21ſt of October, 1681, complains:	Anſwer.	
1ſtly. That Mr. Randolph, being appointed ſearcher, collector, and ſurveyor, of his majeſty's cuſtoms, in Maſſachuſets colony, to prevent the the breaches of the acts of navigation.	That Mr. Randolph, on ſight of his majeſty's letters patents, was received and acknowledged as collector, ſearcher, and ſurveyor, of his majeſty's cuſtoms, and his letters patents accordingly enrolled.	This the agents know to be true.
That all his care had no effect; in regard, attachments were granted againſt him and his officers for doing their duties.	That no other complaint, or ſuit, againſt his majeſty's officers hath been at any time countenanced, or damage given thereupon, but ſuch as in their beſt judgement has been purſuant to the providing damages for the officers juſt vexing the ſubjects.	Vid. the act.
And, when any offenders were proſecuted in his majeſty's name, the officers were obliged (againſt law) to depoſit money before trial could be obtained, and afterwards forced to pay coſts and ſuffer other hardſhips.	That, for ordinary trials in his majeſty's ſtated courts, nothing hath been demanded or taken of Mr. Randolph but in extraordinary caſes; where juries were ſummoned at his inſtance, and travelled far on purpoſe, ſo much has been taken as to defray their neceſſary attendance; which will be prevented in future, and all caſes reſerved to the ordinary terms if the officer be directed thereto.	

That

Charges.	*Anſwers.*	*Proofs.*
That appeals to his majeſty in matters of revenue were refuſed to be admitted.	That if, without either reſtriction of the ſum or difficulty of the caſe, all matters indifferently may, by the officer or his deputy, be removed from his majeſty's courts there, and the ſubject forced to tranſport himſelf into this kingdom of England, it will force them to quit their woods upon any pretence rather than ſuffer ſuch inconvenience, and thereby wholly diſcourage all trade in that his majeſty's plantation, of which we humbly pray his majeſty's gracious conſideration.	
That the Maſſachuſets had ſeized into their hands the moiety of forfeitures, belonging to his majeſty by law.	We know of no inſtance of that nature except one particular caſe, wherein a maſter of a ſhip was fined for an abuſe of his majeſty's government there eſtabliſhed, wherein the judgement was miſtakingly entered by the officer, of which, nevertheleſs, the moiety, or thereabouts, was given to Mr. Randolph.	
And required:		
2dly. That fit perſons be ſent to anſwer all matters complained of without farther delay.	Done. As we humbly hope.	
3dly. That all encouragement be given	It is by law eſtabliſhed, and in all courts practiſed.	Laws, p. 90.

Charges.	*Anſwers.*	*Proofs.*
Mr. Randolph in the execution of his office.		
4thly. That reſtitution be made of all money levied from his majeſty's officers.	Nothing has been taken of his majeſty's officers but in extraordinary trials, where jurors and others have travelled far, for the defraying of the expences neceſſary, which cannot be had again of the ſeveral parties; and we hope his majeſty will not charge the government for the ſame.	
5thly. That an account be given his majeſty of the moiety of all forfeitures by them received.	There hath yet been no forfeiture of ſhip and goods; but when it ſhall happen will be carefully preſerved.	
6thly. That the act for encouragement of ſhipping and navigation, of 12 Car. II. and the act for ſecuring the plantation trade, 25 Car. II. and all trade acts, be put in execution.	Theſe have been fully put in execution to the beſt diſcretion of the government there; and, if the method uſed anſwer not the end deſigned, the government will be ready to amend the ſame upon any direction from hence.	
7thly. That his majeſty's officers may proſecute ſuch as ſhould violate the acts without charge, as in England.	This is allowed in all his majeſty's ſtated courts.	

8thly.

Charges.	*Anſwers.*	*Proofs.*
8thly. That appeals, in matters of revenue, be admitted to his majeſty.	This it is hoped will be conſidered of.	

All which is humbly ſubmitted.

[67] Journ. Plant. Off. 4 v. p. 34-64; Hutch. Hiſt. 1 v. p. 302-3. — [68] Ib. p. 331-4. — [69] Ib. p. 256-7.

[70] Hutch. Hiſt. 1 v. 337. During the reign of Charles II. the general-court maintained no ſtanding agents in England: But it enjoyed the advantages ariſing from the ſervices of emiſſaries, zealous and intelligent, Colins, Knowles, Thompſon, and others, who procured and tranſmitted intelligence and papers from the public offices, who intrigued, who diſtributed money, though to no great amount. — See the letters of theſe men in the collection of papers made by Mr. Hutchinſon, p. 435-75. — There is reaſon to believe, that Lord Angleſey, the keeper of the privy-ſeal, who, ſays Burnet, "ſtuck at nothing and was aſhamed of no-"thing," had touched the wages of corruption. — Ib. p. 473. — Ruſhworth, who publiſhed the memorials with regard to the affairs of England during the reign of Charles I. was employed in his old age, at a very ſmall ſalary, to procure ſtate-papers from the public offices, though without much ſucceſs. "A feeling was given to ſuch clerks of the "council as ſerved them with true intelligence." — Ib. — The emiſſaries, however, complained of the parſimonioufneſs of the general-court, becauſe they were unable — "to ſtop a gap, by way of preſent, — which "would have entangled for a long time and perhaps everted the buſineſs." — Ib. — But, as the patent, which was regarded "as their hearts blood," was involved in greater danger, the general-court more freely opened the purſes of the people. And the following notices, extracted from New-Eng. pap. 3 v. p. 250. diſplay the money-tranſactions of the agents, Dudley and Richards.

"On the 5th of May, 1682, the committee, appointed by the gene-"ral-court to correſpond with the agents, empowered them, that in caſe "by the diſburſement of money, not exceeding 1000l. that can improve "any

" any meet inſtrument for the obtaining any general pardon of paſt er-
" rors, and continuance of the charter, and their attendance thereby
" ſhortened and diſmiſſion obtained, that then they take up money upon
" the credit of the country. — On the 14th of June, the committee or-
" dered the treaſurer to procure the agents credit in England for 3000l.
" in caſe they could obtain pardon of all paſſed offences under the broad
" ſeal, and a confirmation of our patent privileges. — At a new meeting
" of the committee, the treaſurer was ordered to ſend 3000l. to the
" agents with all ſpeed." — There is no evidence in hiſtory, or records, or papers, to ſhew, that any of the other colonies employed ſimilar means to gain their ends in England.

[71] Jour. Plant. Off. 4 v. p. 57-8; N. Eng. Ent. 2 v. p. 143. — [72] Ib. p. 165-6. — [73] Hutch. Hiſt. 1 v. p. 336-7.

[74] Extracts of the articles of high-miſdemeanour, exhibited by Randolph, the general accuſer during thoſe days, againſt the governor and company of Maſſachuſets, in June, 1683. — From New-England Ent. 2 v. p. 173.

1ſtly. They aſſume powers that are not warranted by the charter, which is executed in another place than was intended. — 2dly. They make laws repugnant to thoſe of England. — 3dly. They levy money on ſubjects not inhabiting the colony: [And conſequently not repreſented in the general-court.] 4thly. They impoſe an oath of fidelity to themſelves, without regarding the oath of allegiance to the king. — 5thly. They refuſe juſtice, by withholding appeals to the king in council. — 6thly. They oppoſe the acts of navigation, and impriſon the king's officers for doing their duty. — 7thly. They have eſtabliſhed a naval office with a view to defraud the cuſtoms. — 8thly. No verdicts are ever found for the king in relation to cuſtoms, and the courts impoſe coſts on the proſecutors, in order to diſcourage trials. — 9thly. They levy cuſtoms on the importation of goods from England. — 10thly. They do not adminiſter the oath of ſupremacy, as required by charter. — 11thly. They have erected a court of admiralty, though not empowered by charter. — 12thly. They diſcountenance the church of England. — 13thly. They perſiſt in coining money, though they had aſked forgiveneſs for that offence.

[75] Jour.

[75] Jour. Plant. Off. 4 v. p. 171-6. — Randolph was ordered to carry with him to Boſton copies of the declaration concerning the late conſpiracy. Ib. 180. — [76] New Eng. Ent. 2 v. p. 183-5-6.

[77] Hutch. Hiſt. 1 v. p. 340; Neal's N. Eng. 2 v. p. 415-16. — The addreſs of the governor and aſſiſtants to the king, offering to ſurrender their government, and blaming the burgeſſes for their refuſal, is in N. Ent. 2 v. p. 197.

[78] Neal's New Eng. 2 v. p. 477-8; Hutch. Hiſt. 1 v. p. 414-15. — [79] N. Eng. Ent. 2 v. p. 218; Jour. Plant. Off. 5 v. p. 22-62. — [80] Ib. p. 86. — [81] Hutch. Hiſt. 1 v. p. 371. — [82] Jour. Plant. Off. 5 v. p. 158. — [83] N. Eng. Ent. 2 v. p. 266: Randolph was then rewarded for all his toils, by being appointed, by the lord-treaſurer Rocheſter, deputy poſt-maſter of New-England; which is the firſt inſtance of ſuch an appointment that probably occurs in colonial annals. — Ib. p. 269.

[84] Hutch. Hiſt. 1 v. p. 342-50-2; and Maſſachuſets council-book, in the Plant. Off. This book, which is not complete, is the more valuable; becauſe "there are no public records in that province from the diſſolu-"tion of the old charter government, in 1686, till the Revolution, in "1689." — Hutch. Hiſt. 1 v. p. 354.

[85] N. Eng. Ent. 2 v. p. 327. — [86] Ib. p. 320. — [87] Jour. Plant. Off. 5 v. p. 251. — [88] Dougl. Sum. 2 v. p. 247.

[89] See Andros's commiſſion and inſtructions, New-Eng. Ent. 2 v. p. 270-83-306-7-81: — There was a new great ſeal appointed for New-England under the adminiſtration of Andros, which was honoured with a remarkable motto: *Nunquam libertas gratior extat.* — Ib. p. 311. — His ſalary was 1200 l. ſterling a year, payable in England till ſettled in the colony. — Ib. p. 282.

[90] Ib. p. 308-15. — [91] Ib. p. 321-5. — [92] Council-book of Maſſ. in Plant. Off.

[93] Both the accuſation againſt Andros by the agents of the colony, during the reign of William, and the governor's anſwer, are recorded in the New-Eng. Ent. 3 v. p. 188-9; though they were not read before the privy-council, becauſe the deputies, being governed by Sir John Somers, their counſel, refuſed to proſecute or to ſupport the charge. Never was there

there a more frivolous complaint exhibited againſt any ruler: There is not ſo much as an inſinuation that Andros had acted contrary to his commiſſion and inſtructions; which were ſuppoſed to be illegal: And thence the criminality of his conduct was inferred. The following paper ſhews the real motives of Somers when he adviſed the agents againſt the proſecution.

The caſe of John Uſher, who was treaſurer of New-England, during the adminiſtration of Andros. — From N. Eng. Ent. 3 v. p. 352-4.

It ſtates the writ of quo-warranto; — the judgement againſt the corporation; — the commiſſion to Andros; — an act paſſed by the governor and council, continuing the collection of the former taxes; — the warrants iſſued for their collection, in purſuance thereof.

Q. Whether the ſaid warrants, grounded upon the ſaid commiſſion and act, be not ſufficient in law to bear out the ſaid John Uſher in collecting and receiving the revenue: He having given ſecurity to his majeſty to make good what ſhall appear to be due upon the balance of his accounts?

The opinion of the attorney-general.

I conceive that the writs, grounded on the commiſſion and act, are ſufficient to juſtify the ſaid John Uſher. If the judgement had not been given, the laws in being would have warranted this his doing; but, ſince the judgement was actually given and remained unreverſed, the proper way to erect and renew a government in their place, in ſupply of that which was thus taken away, was (as in other plantations) by the king's commiſſion; and it would make an intolerable confuſion, if acts ſhould not be allowed, which were done by reaſon of judgements given in proper courts, although thoſe judgements ought not to have been given, and are reverſable. Beſides, theſe proceedings are the more fit to be allowed; for that they follow the pattern of the printed laws.

2 Dec. 1689. Geo. Treby.

The ſolicitor-general's opinion.

I conceive Mr. Uſher will not be liable to any action for what he did in purſuance of this authority under the great ſeal, at a time, when, by the judgement on the quo-warranto, the corporation was in the king's hands,

hands, and their former government ceaſed: It being neceſſary for the preſervation of the people, that the public charge ſhould be ſupported, for which, at that time, no other proviſion could be made but by authority under the great ſeal. J. SOMERS.

The reaſonings of thoſe eminent whigs and conſtitutional lawyers, though they would not perhaps bear examination in the preſent days, apply with equal force to prove the legality of the adminiſtration of Andros. The truly candid and learned Somers ſaw that the charge againſt him could not be ſupported by fair diſcuſſion. And the man, "who it "was thought would have been ſeverely, if not capitally, puniſhed," is praiſed by hiſtorians, "as far from making a bad governor for Vir-"ginia." — Mod. Un. Hiſt. 41 v. p. 545.

[94] N. Eng. Ent. 2 v. p. 342-5-318.

[95] The following ſtate, tranſmitted by Andros to James II. proves that the accounts, given of the taxes impoſed by the ancient government, were greatly exaggerated: It ſhews the nature and amount of the revenue under the preſent government; the extent of its eſtabliſhment. — From N. Engl. Ent. 2 v. p. 360-1.

	£	s.	d.
Cuſtoms	1596	4	7
The exciſe, (farmed by the late government for £ 450,) but now under commiſſioners	1050	0	0
A pound rate of one penny, (paid formerly in commodities, with an abatement, if paid in money, £. 670,) but no deduction now allowed	1200	0	0
	£ 3846	4	7

Charges of government.	£	s.	d.
Military eſtabliſhment	2278	19	2
Three judges; a chief, £ 150; two others, £ 240	390	0	0
Charges of collection	651	18	9
Governor's ſalary, as paid in England	1200	0	0
	£ 4520	17	11
Deficiency, excluſive of repairs, fire, candles for the guards, contingent charges	674	13	4
	£ 4520	17	11

In order to ſupply what was wanting, he propoſed to raiſe the cuſtoms on wine 1 l. 10 s. a pipe; the exciſe on wine to 1 s. a gallon; the ſame on brandy, &c. that on beer to 2 s. 6 d. a barrel: And the defect to be made up by a county-rate. He was ſoon after ordered by James to levy the rates propoſed by him by an ordinance of the council, and to tranſmit an account of their amount every ſix months. — N. Engl. Ent. 2 v. p. 369. — And an act was accordingly paſſed, by the governor and council, in February, 1687, "for collecting an additional impoſt and exciſe." — Journ. Plant. Off. 6 v. p. 169. — Such was the ſyſtem of taxation during thoſe days, and ſuch was the authority by which it was impoſed.

[96] In November, 1687, James wrote to Andros to aſſiſt the governor of New-York againſt the French. — N. Engl. Ent. 368. — In January, 1688, he informed him, that commiſſioners had been appointed to ſettle the boundaries of the two nations in America; and he commanded him to cultivate a good correſpondence with the Canadians, and not to invade them, till February, 1689. — Ib. p. 378. — And, for the genuine ſpirit of the internal adminiſtration of Andros, ſee ib. p. 340-5, and the council-book of Maſſachuſets, in Plant. Off.

[97] Hutch. Hiſt. 1 v. p. 366-9; Randolph's correſpondence in N. Eng. pap. v. 4. — [98] See Blathwayt's letter in Hutch. Hiſt. 1 v. p. 371. — [99] See both in the N. Eng. Ent. 2 v. 381. — [100] The addreſs is in the Lond. Gaz. 18 June, 1688.

[101] The petition of the diſſenters of New-England, after complaining of hardſhips, ſupplicates ſuch a grant as ſhall ſecure them liberty of conſcience and property, according to his majeſty's late declaration of indulgence, and a confirmation of the government of the college of Cambridge. There was a memorial ſubjoined, urging, in very indecent language, the encroachments of the church of England, and the hardſhip of corporal oaths. On theſe Blathwayt remarks: "This petition and "memorial being referred to the committee, and the petitioners ſum-"moned to attend, the 19th of June, they withdrew their petition, and "did not appear." — N. Eng. Pap. F. N°. 20. — REMARK. It is a ſingular ſpectacle to ſee men, who enjoyed religious freedom in the fulleſt extent,

extent, petitioning for liberty of conſcience, while they thanked the king for conferring, by his declaration, what they now aſked. This ſtrange incongruity is explained in a letter from Cranfield, the governor of New-Hampſhire, to the committee for colonies: He ſays, "that, "though liberty in religion was allowed in this colony, yet that the in- "dependent miniſters were not ſatisfied, becauſe they wanted the power "to command others." — N. Hamp. Ent. 1 v. p. 102.

[102] The intrigues of Mather are diſcloſed in Randolph's Correſpondence, 19 Oct. 1688. — N. Eng. Pap. 4 v. 876-7-82-3-7-8.

[103] The following paper ſhews the accurate ſtate of that tranſaction.

Petition and propoſal of J. Mather, S. Noel, and E. Hutchinſon, on behalf of themſelves and many others of his majeſty's ſubjects in New-England. — N. Eng. Pap. 4 v. 1012-13.

That, ſince the diſſolution of the late government there, many inconveniences have and will attend your petitioners, unleſs relieved therein by your majeſty; in order whereto they humbly propoſe to your majeſty's conſideration the heads in the annexed paper.

That the ſubjects in New-England may be confirmed in the poſſeſſion of their property, as they enjoyed it before the laſt Indian war, or the 29 May, 1686.

That all townſhips may have liberty to aſſemble and determine all their public buſineſs, and that their commerce may be confirmed to them.

That courts of conſcience may decide cauſes under 40s.

That probate of wills, and adminiſtrations, not exceeding 10l. value, may be made in ſuch courts of conſcience, and for greater eſtates in the county-courts.

That marriages may be ratified and regiſtered in a court of conſcience.

That there may be courts of equity for all conſiderable cauſes.

Blathwayt remarks, that theſe paragraphs were ſtruck out at the committee.

That, a revenue of 5000l. per annum being firſt provided for maintaining the government, no other impoſitions are to be laid but by a general aſſembly.

That the general aſſembly ſhall conſiſt of governor, council, and members, to be elected by the freeholders.

That no laws ſhall be made but in ſuch aſſembly.

That there ſhall be free liberty of conſcience, as propoſed by his majeſty in England.

That no perſon be obliged to maintain the religion he doth not profeſs.

That each religion be left to make maintenance for their own religion.

That the preſent college at Cambridge be confirmed to thoſe that erected it, and all the preſent meeting-houſes left free to thoſe that built them.

REMARK. Theſe laſt five articles were dictated merely by their fears; becauſe they enjoyed more fully, at that time, than they had ever done before, the liberties prayed for. See the council-book of Maſſachuſets, in Plant. Off. throughout.

[104] The annexed little paper demonſtrates what is ſaid in the text, and ſhews how unjuſt have been the agents, who procured it, to the memory of James II. — From N. Eng. Pap, 5 bundle, p. 1037.

" His majeſty hath been pleaſed to declare, upon the petition of ſeveral gentlemen on behalf of New-England, that he will grant them a full and free liberty of conſcience and exerciſe of religion, and their ſeveral properties and poſſeſſions of houſes and lands, according to their ancient records; and alſo their college of Cambridge, to be governed by a preſident and fellows, as formerly. All to be confirmed to them under the great-ſeal of England."

REMARK. The approach of the prince of Orange prevented the execution of what had been thus humanely promiſed.

[105] N. Eng. Pap. 5 bund. p. 223. — [106] Ib. and Hutch. Hiſt. 1 v. p. 364-70-1.

[107] Randolph

[107] Randolph wrote to the committee of plantations, in September, 1689: "I may not omit to inform your lordſhips, that the revolt of "this people was puſhed on by their agent, Mr. Mather, who ſent his "letter to Mr. Simon Bradſtreet, the late governor, in which he en-"couraged them to go on cheerfully to ſo acceptable a piece of ſervice "to all good people." — N. Eng. Pap. 5 bund. p. 94. Neal's N. Eng. 2 v. 431-2; Hutch. Hiſt. 1 v. p. 374-391.

[108] Neal's N. Eng. 2 v. 433. — [109] Ib. p. 444-7. — [110] Hutch. Hiſt. 1 v. 387-90-1.

The relations of thoſe who were moſt active in atchieving this famous revolution in N. England may be ſeen in all the hiſtories of that country. The account, which Andros gave of it to the miniſters of England, is in the N. Eng. Pap. bund. 5, p. 223. But the following extract of a letter from Captain George, of the Roſe frigate, to Papys, ſecretary of the admiralty, dated at Boſton, 12 June, 1689, contains a more intelligent and impartial relation than either; becauſe he was leſs intereſted. — Same papers, p. 34.

"Theſe laſt five months this place hath been filled with various re-"ports of tranſactions in England; of the prince of Orange's landing; "that his majeſty went to France, and there died; that afterwards the "prince and princeſs of Orange were proclaimed king and queen: But "no reaſonable confirmation till the arrival of two ſhips from London; "the firſt of the 26th, and the other of the 29th of May: Sir Wil-"liam Phips coming in the latter, who brought ſeveral proclamations "put forth by their majeſties. But before this confirmation, on the "18th of April laſt, the people of this place and country, pretending "themſelves diſſatisfied with the government of Sir Edmond Andros, "roſe up in arms, ſeized me firſt, and run me into the common jail; "and, ſome hours after, his excellency coming down to ſit in council, "pretending he had a deſign to deliver the government to the French, "and rumours being ſpread among the people, that at leaſt he intended "to fire the town at one end, and I at the other, and then go away in "the ſmoke for France; which doubtleſs will be thought unreaſonable "to believe. The fort, being ſurrounded by about 1500 men, was ſur-"rendered.

" rendered. The next day the governor was committed priſoner to the " fort, under ſtrong guards, and myſelf to Colonel Shrimpton's houſe, " who was very kind to me. The ſame day the caſtle, about three miles " below the town, upon an iſland, was ſummoned, and ſurrendered. I " was alſo ſent for to the council of ſafety, as they term themſelves, con- " ſiſting of the chief gentlemen and inhabitants of Boſton, who deman- " ded of me an order to the lieutenant for ſurrendering the ſhip. In " anſwer to which, I ſaid it was not in my power, being a priſoner, " nor would I ever be brought to give ſuch order, which the lieutenant " would not obey. They told me my commiſſion was now of no force, " and urged me to take a commiſſion from them, and ſerve the coun- " try. I told them my commiſſion was good till one from the crown of " England made it invalid. While they were thus diſcourſing with me, " they ſent on-board two or three men, who perſuaded the lieutenant " and company to declare for the prince of Orange; which was pre- " ſently done; and they immediately informed me of it, and remanded " me back to confinement. On the 23d of the ſame month, an order " was ſent on-board by the ſaid council to the lieutenant, for the deli- " very of the ſails; which was accordingly executed, and now remain " in cuſtody of them. What they intend to do I do not know, but " they threaten to have the ſhip farther diſmantled; but I hope they will " be prevented by a ſpeedy arrival of orders from your hands to return " home.

Jo. George."

CHAP.

CHAP. XVII.

Attempts to plant the banks of Piſcataqua. — New-Hampſhire granted to Maſon. — His efforts. — Main conferred on Gorges. — He eſtabliſhes a colony and government. — Perſecutions of Maſſachuſets found Exeter. — Its aſſociation. — Dover built by an emigration from England. — Its compact. — The ſtory of both. — Maſſachuſets acquires New-Hampſhire. — Main emerges from obſcurity. — Maſſachuſets extends its juriſdiction over it. — Complaints of its oppreſſions. — Maſon and Gorges apply to Charles II. *for relief. — The attempts of the royal commiſſioners. — Agents appointed to ſettle the pretenſions of all parties. — Opinion of the judges. — Main purchaſed by the general-court. — Its ſubſequent conduct. — A royal government eſtabliſhed over New-Hampſhire. — A preſident and council appointed. — Their adminiſtration diſapproved of. — Cranfield named governor. — His proceedings. — An inſurrection. — Complaints againſt him. — Unhappineſs of the colony. — Annexed to Maſſachuſets.*

OF all the members of the Plymouth-company, none were ſo conſpicuous for the energy of their exertions, in colonizing New-England, though not for the greatneſs of their titles, as Sir Ferdinando Gorges and John Maſon. Yet the country, which owed them ſo much, becauſe they contributed ſo much to give her exiſtence, has been ungrateful to their memory; either neglecting their names, as unworthy the regard of poſterity, or deriding them as meriting contempt. The clergy of Maſſachuſets, who were at the ſame time her hiſtorians, who, poſſeſſed of conſiderable abilities, have tranſmitted the memorials of her affairs, diſliked their perſons, becauſe they formed pretenſions on that *ſanctified region*, and hated their principles, becauſe they were attached to monarchy and the church of England. They, however, who engage in laudable enterpriſes, who are neither rewarded during their lives with renown, or tranſmit to their deſcendants little except their pretenſions and diſputes, deſerve at leaſt the ſimple notice of hiſtory, becauſe it is the only gift ſhe can beſtow on the benefactors of mankind.

During

During the fifteen years of the exiſtence of that company, it adopted the policy of conferring on various men ſeveral interfering parcels of New-England; which has thrown the greateſt obſcurity over its early hiſtory; which long occaſioned perplexing embarraſſments to the different claimants, to the colonies, and to England. A variety of little ſettlements were however planted during that period along the tract of coaſt which ſtretches Eaſtward from the river Merrimack to Sagadahock, for the purpoſe of fiſhery; but their proſperity was extremely inconſiderable, becauſe they ſeem to have been animated by no enlivening principle of action: They were rather temporary eſtabliſhments for traffic than the ſeed-plots of future plantations. And though the two gentlemen before-mentioned made the moſt vigorous efforts to form colonies on the river Piſcataqua, by tranſporting planters and ſervants at very conſiderable expence, by eſtabliſhing a kind of government for them, yet they too ſeem to have been equally unſucceſsful. The emigrants were not attached to their perſons, as were the people of Maryland to Baltimore; they did not regard with enthuſiaſm their principles, as we ſhall find the Pennſylvanians did thoſe of Penn. There being then no mutual attraction between the proprietors and people, the ſettlements declined in proportion as the whole were diſunited; becauſe there exiſted no common meaſure of union. Yet a ſmall emigration of planters and traders was ſent out by thoſe gentlemen in the year 1631, which was conducted by Williams, who then laid the foundation of Portſmouth, near the confluence of the river Piſcataqua, and who long ruled this feeble community with a prudence that has done honour to his name. But what a length of years does it require to convert a deſert into cultivated fields; how ſlow is the change of ſeveral lonely huts into a populous town, the buſy ſcene of commerce; how gradual is the progreſs of a few families in their riſe to conſiderable cities! And, when Joſſelyn ſailed along the coaſt, in July, 1638, he ſaw "no other than a mere wilderneſs; here and there, by the "ſea ſide, ſcattered plantations with a few houſes."[1]

Diſſatisfied with their various late conveyances, becauſe they had been thus unſucceſsful, and deſirous to hold in ſeveralty what they ſeem to have formerly enjoyed in common, Maſon and Gorges obtained from the Plymouth-company,

mouth-company, when it divided New-England among its members, two conſiderable tracts of land in that country. In April, 1635, to the former was granted for ever that territory, lying along the coaſt from Neamkeck river, near the northern boundary of Maſſachuſets, to the river Piſcataqua, extending ſixty miles into the country from their ſources; with ſuch powers of government as that corporation itſelf poſſeſſed: And the region, thus conveyed, was for the firſt time called New-Hampſhire. As no more ancient patents ſtood in the way of the preſent, as length of occupancy formed no bar, Maſon then aſſuredly acquired that kind of right to the ſoil which the law of England conſidered as perfectly valid: And it was ſuch a title as that by which almoſt all other American territory was then held. But it gave him none of the powers of government, becauſe the truſt repoſed in the company could not be tranſferred, ſince it could be executed in no other manner than what had been originally preſcribed. Though he ſent agents to diſpoſe of his lands, to take general care of his intereſts, he ſeems never to have eſtabliſhed any regular adminiſtration in this province; becauſe he ſoon after died, leaving to others to enjoy his rights, to exerciſe his powers, and to experience his vexations.[2] How much is it to be lamented, that the adventurous men, who engage in undertakings which tend to add to the comforts of mankind, are ſeldom rewarded with ſucceſs, or generally live to enjoy any other recompence than the deriſion of the world!

The month of April, 1635, is equally the epoch of the grant of the ſame company of that more conſiderable region, extending from the northern limits of New-Hampſhire north-eaſtward to the river Kenebeck, and from them ſixty miles into the country, to Sir Ferdinando Gorges, in abſolute property, with ſuch powers of juriſdiction as the grantors poſſeſſed; but with a reſervation of an appeal, from the colonial judicatories, to the corporation, at a time when it ceaſed to exiſt. Thus, whatever pretenſions, to the ſoil, the council of Plymouth might form, were now enjoyed by that gentleman. During the ſame year he diſpatched William Gorges, his nephew, to govern that territory, which was then called Somerſetſhire, who ruled, for ſome years, a few traders and fiſhers with a good ſenſe equal to the importance of the truſt. But,

whether the proprietary diſtruſted his own powers, or was actuated by the prudent caution which experience inſpires, he obtained, from the favour of his prince, a patent of confirmation in April, 1639. His limits were now extended to one hundred miles from the rivers ſouth-weſtward into the deſert. This immenſe region was now denominated Main: And he was inveſted with all the royal rights of a count-palatine, with a reference to the powers formerly exerciſed by any biſhop of Durham. Animated by theſe attentions, and inveſted with theſe powers, he eſtabliſhed a civil government within his province in the ſubſequent year. With a variety of ordinances, he tranſmitted, in March, 1639-40, a commiſſion to Joſſelyn and others, appointing them his counſellors, for the preſervation of peace, the puniſhment of crimes, the adminiſtration of juſtice. But, though he had long directed chiefly the affairs of the Plymouth-company, which ſeem never indeed to have proſpered, Gorges was by no means equal either to the ancient or to modern legiſlators. The conſtitution, which he then eſtabliſhed for Main, was merely executive, without any of the powers of legiſlation; nor was an aſſembly, in which the people were repreſented, either mentioned or alluded to. He did not even offer liberal terms, on which men might purchaſe and enjoy his lands, though they had been at all times propoſed as the beſt means to promote ſettlement and augment population. What could he expect from ſuch a form of government during ſuch a ſeaſon, when the pulſe of freedom beat high, and in the vicinity of a people who carried the principles of liberty to extremes! The province languiſhed for years in hopeleſs imbecillity: And its langours only ceaſed, and it acquired a principle of life, when he ceaſed to be its proprietary and lawgiver. Yet he incorporated the town of York in the year 1641, giving it a mayor, aldermen, and a recorder; though this circumſtance ſeems not to have added to its wealth or its importance: And it long partook of the diſtractions, with their attendant evils, of the neighbouring villages of Main. From his province the cares of the proprietary were not long after turned to more intereſting objects, becauſe they were nearer. He entered with zeal into the civil war which enſued: Fighting, in his old age, with the ſpirit of youth, for his prince and benefactor. And, while

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he ſhared in common misfortunes, he ſhewed that he deſerved a better fate, becauſe he was grateful, and ſacrificed his all to his attachment to principle.[3]

Mean-while perſecution contributed to people a country, which neither perſuaſions nor money had been able to effect. Among the numbers, which the Antinomian diſtractions at Boſton, during the year 1637, forced into baniſhment, Wheelwright, the miniſter, appeared conſpicuous, as a leader, who carried with him a conſiderable number of his followers. They retired only a few miles beyond the north-eaſtern boundary of Maſſachuſets, and, amid the foreſt which then ſkirted the ſhore of the great bay of Piſcataqua, they planted the town of Exeter. They at once took poſſeſſion of the lands of Maſon, without his conſent, in oppoſition to his legal rights: They probably derided his authority, becauſe they neither ſaw nor feared his power. And, while they reſpected the perſon and opinions of their ſpiritual guide, they determined to raiſe their community on the broad baſis of general conſent. When they reflected, that it was impoſſible "to live without wholeſome laws," of which they were then altogether deſtitute, in October, 1639, thirty-five perſons "combi-" ned themſelves, in the name of Chriſt, to erect ſuch a government as "ſhould appear agreeable to the will of God:" They profeſſed themſelves ſubjects of their ſovereign, King Charles, according to the liberty of the Engliſh colony of Maſſachuſets: They ſolemnly bound themſelves to ſubmit to ſuch Chriſtian laws as were eſtabliſhed in the realm of England, according to their beſt knowledge, and to ſuch other regulations as ſhould, upon good grounds, be enacted among themſelves. If the expreſſions of this remarkable combination appear at preſent unuſual, the ſenſe is ſufficiently intelligible: The aſſociators admitted themſelves to be ſubjects of the king of England; they recognized the laws of this realm to be obligatory on them; they promiſed obedience to ſuch ordinances as ſhould be made by themſelves.[4] Having thus eſtabliſhed ſuch a form as at once pleaſed the people and ſhewed their principles, they choſe Underhill as governor, who was at the ſame time a deep enthuſiaſt and an immoral man: Two characters, which were then, as in all ages, by no means incompatible. But, though they now ruled themſelves, and

were freed from perſecution, they did not enjoy much happineſs or proſperity, becauſe, nature fought againſt them, they were oppoſed by rivals, their minds were ſour and therefore not eaſily pleaſed.

Not long after, arrived in their vicinity, on the banks of the ſame river, a ſmall emigration from England; compoſed of perſons of greater eſtates, of very different religious and political opinions. Miſchiefs had already befallen them for want of government, which ſeems ſo neceſſary for man in every ſituation, and they dreaded future inconveniences. And to the number of forty-one, which ſeem to have been the heads of families and freemen, they entered into a ſimilar aſſociation, in October, 1640. In order that they might enjoy more comfortably the cuſtoms of their country, they entered into a voluntary compact, by which they engaged themſelves to ſubmit to the royal laws, together with ſuch others as ſhould be concluded by a major part of the freemen; provided they were not repugnant to the cuſtoms of England, and were adminiſtered in behalf of the king: And this they mutually promiſed to do till his excellent majeſty ſhould give other orders concerning them. Nothing can be more explicit than the language of this declaration; and nothing can ſhew more clearly the attachment of theſe men to their native land, to its form of government, to its juriſprudence, to its religious eſtabliſhment. And they ſoon graced the ſhore of the bay of Piſcataqua with the town of Dover. But they ſeem to have made no application to the proprietary of New-Hampſhire, where they ſettled, or rather to have acted under thoſe who claimed from a very different right. The greater number choſe Underhill before-mentioned for their governor, though not without the oppoſition of a conſiderable party; which ſoon introduced all the confuſions of anarchy that they had been ſo ſolicitous to avoid. And religious differences, ſuperadded to theſe, filled up the meaſure of their diſtractions. The church, which was governed by Larkham, and the Antinomians, which were led by Knolles, contended for ſuperiority. Both were equally zealous; and a civil war enſued within the compaſs of an inconſiderable village. Williams, who had for ſome years ruled with great prudence at Portſmouth, who ſeems to have been entitled from the appointment of the proprietary to the government of the province, ſoon interpoſed.

interpoſed. Bringing with him to Dover a company of armed men, which could alone give effect to his commands where every thing was diſputed with force, he eaſily ſuppreſſed the diſturbance. He expelled Underhill, and Knolles, and Larkham, who appear to have been all equally unfit for thoſe ſtations of truſt, to which they had raiſed themſelves by the arts of intrigue among an enthuſiaſtic people. Thus man, whereſoever he is placed, cannot exiſt without government, becauſe he was born for ſociety: Yet how often is he miſerable even under the direction of ſelf-rule; becauſe, of the multitudes born, how few are capable of governing themſelves! And the towns of New-Hampſhire did not therefore long enjoy that inſignificant independence, which they had thus reared for themſelves, and of which they had thus ſhewn themſelves to be unworthy.[5]

From the transfer of the charter before-mentioned, to the year 1639, the government of Maſſachuſets freely admitted the validity of the title of Maſon to the lands along its north-eaſtern boundary; fixing, at the diſtance of three long miles beyond the river Merrimack, what was for years remembered as "the bound-houſe." It even agreed to ſurrender to that gentleman the inconſiderable territory, of the breadth of three miles, lying along the northern bank of that mighty ſtream, in lieu of his pretenſions to lands, by virtue of a prior grant, about Cape-Anne, within the acknowledged limits of its patent. For, the real courſe of the Merrimack was not then perfectly known; ſtruggling for exiſtence, the extent of the colony was fully equal to the number of its ſettlers, perhaps to the wiſhes of its rulers: And it was over-awed by the government of England, which had made a vigorous attack on its charter.[6] Having, however, fully explored that river; having, with the augmentation of its people, extended its views of aggrandiſement, it determined that New-Hampſhire was included within its patent; becauſe it is eaſy to find arguments to ſupport a predetermined meaſure: And, during the year 1640, it began to grant lands, and to form ſettlements, avowedly within this province; becauſe there now remained no power to obſtruct its proceedings, however unfair or inconſiſtent with the rights of neighbourhood. In order to execute fully its deſign of extending its juriſdic-

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tion over the whole, it intrigued in that colony with its uſual art and ſucceſs. And, in April, 1641, it entered into an agreement with ſeveral inhabitants of the banks of Piſcataqua, who claimed their lands under a different title than the grant to Maſon: The one party ſubmitting to the government of Maſſachuſets in the ſame manner as its original ſettlers; the other promiſing "to be helpful in the maintenance of the right of the "patentees in all legal courſes." The men, who were not included in the preſent compact, were ſoon worked on by their hopes and fears: And the general-court, in October, 1641, paſſed an ordinance, declaring; that the people, inhabiting on the river Piſcataquack, ſhall henceforth be reputed under its power, as are already the other inhabitants; that they ſhall have the ſame order for the adminiſtration of juſtice; that they ſhall be exempted from all public charges, except ſuch as ſhall ariſe among themſelves, or ſhall be for their own benefit; that they ſhall be allowed the ſame liberties of fiſhing, of planting, and of felling timber, as formerly; that they ſhall be allowed to ſend two deputies to the court at Boſton.[7] And in this manner, and on theſe conditions, the whole ſeem to have equally ſubmitted. Thus New-Hampſhire, at the end of ſix years only, ceaſed to be a ſeparate province: Thus the various towns, planted within her foreſts, relinquiſhed their voluntary aſſociations before-mentioned, which had only been productive of anarchy, and gave up the flattering diſtinctions of ſelf-government, that they had exerciſed to ſo little purpoſe.

The general-court having, in this manner, conferred on its neighbours the greateſt of bleſſings, general protection, and a regular adminiſtration of juſtice, turned its next cares to their future welfare. It ſent them ſeveral miniſters, Moody, Cotton, Reyner, and others; "by whoſe "care and diligence, as we are aſſured,[8] the people were very much ci-"vilized and reformed." But Wheelwright and his followers, who had formerly ſought an aſylum in the deſert, from the perſecutions of their bigotted enemies, once more fled acroſs the Piſcataqua into the province of Main; becauſe, in the preſent change, they feared future injuries. Nothing could be more profound than the views of the general-court in this tranſaction; becauſe the religious tenets of the independents, and

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the political maxims of Maſſachuſets, mutually ſupport each other. By converting the inhabitants, who were already prepared for inſtruction, they inſured their obedience. But they were rendered unfit to be the colonial ſubjects of England; becauſe their religious principles are utterly incompatible with ſubordination. And that meaſure we ſhall find in its conſequences as laſting, as they proved perplexing to the proprietary, and embarraſſing to the councils of the parent ſtate. Yet there were a few men, who, having derived their poſſeſſion from John Maſon, ſtill paid their rents to his heirs; becauſe they continued attached to the laws and church of England, which favoured rights that had been derived from the crown of England. It was in vain for Maſon, who now acted as agent for his kinſmen, to proteſt in July, 1651, againſt the daily encroachments on their lands: It was to no purpoſe for him to petition the general-court in May, 1653; ſtating their wrongs, and praying for protection.[9] It had been ſtipulated as the ground-work on which was eſtabliſhed the ſubjection of New-Hampſhire, that the pretenſions of their opponents ſhould be ſtrenuouſly countenanced, and the legal rights of the proprietors conſequently depreſſed. Being now freed from the weighty cares of government; being protected from the attacks of their Indian enemies, and from their internal diſſentions, ſtill more fatal; the people of New-Hampſhire, during the ſpace of forty years, enjoyed the advantages and bleſſings of a regular adminiſtration, and engaged ſucceſsfully in all the purſuits that naturally tend to promote the proſperity, and wealth, and greatneſs, of nations.

Mean-while the counſellors of Sir Ferdinando Gorges ruled the province of Main with a ſway feeble and ill-directed, becauſe they were unſupported by any real power, and ſeldom received inſtructions from a proprietary who was too deeply engaged in civil warfare to attend to diſtant objects. Nor was ſuch a government, which preſerved internal quietude, probably at all inconvenient; becauſe, whilſt it did not burden a people emerging into exiſtence with a multitude of rules, it ſuffered every one to manage his own affairs in the way moſt agreeable to himſelf. What was deplored in thoſe days by ſome, as an evil, promoted univerſal proſperity: The hope of immunity, from the laxity of adminiſtration,

miniſtration, invited ſettlers: And Main offered a quiet retreat to the unfortunate, and a ſure aſylum to the perſecuted. Along that line of coaſt, which ſtretches eaſtward from the bay of Piſcataqua, ſixty miles, to Kenebeck, aroſe ſucceſſively the towns of Kittery, York, Wells, Cape Porpus, Saco, Blackpoint, Caſco, and Kenebeck.[10] The convenience of fiſhery laid their foundations, and the traffic of lumber, for the various uſes of the cooper and the builder, reared them to completion: And they flouriſhed, becauſe they purſued the occupations, which they had choſen for themſelves, without interruption.

Maſſachuſets ſaw and envied their proſperity. By the annexation of New-Hampſhire ſhe had already acquired ſixteen miles to her original extent of territory: But the proſpect of adding ſixty more not only flattered her ruling paſſion, but the greatneſs of the object, and the difficulty of the purſuit, ſerved only to incite her anxiety, and to animate her exertions. The former pretence of the great northerly extent of the river Merrimack equally ſerved as an argument when applied to Main, as it had done in the acquirement of New-Hampſhire. Through the clergy, who had formed an alliance with the ſtate, becauſe the intereſts of both were promoted, ſhe intrigued among a people ignorant and fanatical. The intereſts of diſcord and diſorder were promoted. And thoſe confuſions naturally enſued which are but too often increaſed by the deſigning, that they may profit from their own wrongs. The general-court, therefore, "encouraged the diſpoſition which prevailed in many of "the inhabitants to ſubmit to its juriſdiction." Having thus prepared the minds of men, it appointed, in the year 1651, Bradſtreet, Deniſon, and Hawthorn, to procure that ſurrender of the government by treaty, to which the people had been thus pre-diſpoſed. And, in November, 1652, the neareſt towns of Kittery and York formally ſubſcribed a declaration of their ſubmiſſion.[11] Yet, as theſe proceedings were obſtinately oppoſed by the principal inhabitants, becauſe they dreaded the loſs of their own conſequence in the ſubjection of the province, the towns of Wells, Cape Porpus, and Saco, did not ſubmit till the ſubſequent year. The villages lying ſtill farther eaſtward appear not to have ſurrendered their independence till July, 1658. And, though not only the incen-

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tives of hope and fear were employed, but "violent compulsory means" were used, some of the most respectable inhabitants never owned the authority of Massachusets, which they considered as usurpation; and they were treated as rebels against a government, just in its origin, and sanctified by the length of its continuance." In this manner did the general-court extend its authority over the province of Main. It used the most prudent means to preserve what it had thus acquired by its dexterity and vigour. It declared the inhabitants, whether members of the church or of any other religion, to be all equally freemen of the corporation, upon taking the oath of fidelity to the commonwealth. This province was now converted into a county; to which was given the name of Yorkshire. Here justice was administered in the same manner as in the other districts of Massachusets; and the towns were henceforth allowed the important privilege of sending deputies to represent them in the general-court. While we cannot approve either the spirit of aggrandizement which prompted this measure, or the pretence by which it was justified, we must admire the address by which it was executed, and the prudence and good policy by which the acquisition was preserved.

Nevertheless men, whose pride is hurt at the same time that their interests are affected, are not often patient of wrongs. The friends of the late government therefore applied to the parliamentary commissioners of colonies for redress, to little purpose. The loyal part, which the proprietary had acted during the late interesting scenes, had rendered him obnoxious; the attachments of Massachusets procured her esteem and favour. They equally applied to the protector "for restitution of the "right of government." But the general-court had the influence to procure an address from several towns to Cromwell; stating, that former experience had fully evinced how much their weakness had occasioned distraction, their paucity division, their means contempt, to the total subversion of all civil order; and praying, that he would continue them under the government of Massachusets, because their weakness called for support, their manners for strictness of rule. Oliver was "gathered to his fathers" before it arrived, and Richard promised to consider it at a more leisure time, which, however, he never enjoyed during the

days of his exaltation." The injured felt their wrongs too ſenſibly to remain inactive long: And they petitioned the parliament,[13] which aſſumed the government upon his depoſition, for relief, without ſucceſs; becauſe they were too much engaged in their own intereſting affairs to attend to colonial applications, or to the redreſs of the injured. Thus we behold the principles and pretences of all parties: Thus, whoever ruled in England, their ſovereignty was admitted, becauſe to them applications were made which ſuppoſed ſubmiſſion; their juriſdiction was recognized, becauſe from them reparation was ſought.

The Reſtoration was no ſooner atchieved, than every party and every man who had even ſuffered injury from Maſſachuſets complained to Charles II. becauſe, from a prince who had himſelf been wronged by the foes to monarchy, inſtant relief was expected. Among theſe appeared conſpicuous Gorges and Maſon, the grandſons of the original patentees, who ſtated, in ſtrong language, both the merits of their fathers and their own ſufferings.[14] Nothing could be more evident than the juſtneſs of their pretenſions, except the frivolity of the pretences on which they had been deprived of their poſſeſſions. For there was nothing in controverſy but the north-eaſtern boundary of that colony. The firſt agents, who appeared at the court of Charles, ſeem to have been aſhamed of the reaſons upon which it had been extended upwards of ſeventy miles along an admirable ſhore, contrary to the original expectations of the patentees; to the intention of the Plymouth council, which granted the territory; of the king, who confirmed it; in oppoſition to the dictates of common ſenſe: And they, in ſome meaſure, diſclaimed, on behalf of their conſtituents, any title to Main; ſaying, they only governed it till orders ſhould come from England; though their moderation and candour gave little ſatisfaction at Boſton. Having received the decided opinion of Palmer, attorney-general, in favour of his right, that monarch wrote to the people of that province; ſtating the right of the proprietary, and requiring them to deliver to his commiſſioners peaceable reſtitution of what he had been ſo long diſpoſſeſſed.[15] Yet, though theſe men, as early as March, 1662, had proclaimed that prince, had adminiſtered the oaths of allegiance to the inhabitants, had endeavoured to hold courts as formerly,

formerly, their active zeal anſwered no good purpoſe: The general-court oppoſed them ſecretly by its intrigues, and openly by ſuperior force. And the efforts of the friends of the ancient government, and the mandates of the common ſovereign of all, proved equally unſucceſsful;[16] becauſe they were not directed by the ſame ſteady ſpirit as thoſe of their opponents.

As the appointment of the royal commiſſioners, in the year 1664, was owing chiefly to the complaints before-mentioned, as the diſcuſſion of claims and the ſettlement of boundary were chief objects of their voyage to New-Englaud; during the ſummer of 1665 they entered the province of Main, in order to reſtore that repoſe of which it had been for ſome time bereaved by the mutual claims of contending parties, which alternately exerciſed juriſdiction over this diſtracted province. Being now applied to by the zealous deputies of Gorges, they in ſome meaſure reſtored him to what they deemed his undoubted right: They eſtabliſhed a temporary government in the royal name; appointing juſtices of the peace, and other officers, for the preſervation of public tranquillity, by the adminiſtration of juſtice. But the general-court, neither convinced by the reaſonings in the king's letter, nor over-awed by the power of his commiſſioners, vigorouſly oppoſed all their proceedings, becauſe it deemed its own pretenſions as valid as the conduct of its opponents was unjuſt. Conſidering their proceedings as breaches of the public quietude, it deſired a treaty, in order if poſſible to convince them of its own rectitude, and the unreaſonableneſs of others. But this was declined in ſuch language as ſhewed that its hopes of amicable agreement were ill-founded. It publiſhed a formal proteſt againſt their conduct, giving warning to the people to yield no obedience to commands which were worthy of none, becauſe they were contrary to charter privileges. It ſent officers to adminiſter juſtice as formerly; though the ſame prompt obedience was not now paid to their decrees. And all the anarchy and conſequent diſtractions of diſputed juriſdiction enſued.[17] It was to little purpoſe for the commiſſioners to communicate the king's orders, of April, 1666, to the general-court; commanding, "that their deciſions, with regard to "boundaries, ſhall be obſerved till he ſhall give a final determination."[18]

It was in vain for them to recommend obedience, and to warn them of the bad conſequences of a contrary conduct.[19] As ſoon as the commiſſioners had returned to England, it appointed Leveret and three commiſſioners "to ſettle all affairs for the government of the people there." And theſe, attended by a troop of horſe, to give weight to their proceedings, entered the province in July, 1668, and eaſily re-eſtabliſhed the authority of Maſſachuſets upon the ruins of a feeble proprietary adminiſtration.[20] As both parties foreſaw that this conduct, ſo contrary to the royal intention and orders, muſt neceſſarily give the greateſt offence in England, they procured addreſſes from the people in ſupport of their own pretenſions, and praying for a continuance of their own power. But to theſe little regard ſeems to have been paid, becauſe the ſigners were deemed there what they have been at all times, nothing but inſtruments in the hands of others for promoting the purpoſes of intereſt or ambition. It is only to be lamented, that, in the contentions of all, the authority of the laws was deſpiſed, becauſe none looked up to them for a rule of their actions.

While Maſſachuſets enjoyed that undiſturbed authority in Main, which her ſuperior power and perſeverance had procured, the proprietary was inceſſant in his application to their common ſovereign for relief. And his complaints were liſtened to with the greater attention, becauſe they were ſupported by the popular clamour of England. Having now contended with the general-court upwards of fourteen years to no purpoſe, Gorges and Maſon made a tender of their claims to Charles, who received propoſals favourably, which promiſed future advantages to his family. For he intended to form New-Hampſhire and Main into an eſtabliſhment for the duke of Monmouth, the moſt beloved of all his ſons. Jones and Winnington, the crown-lawyers, aſſerted the legality of the title to both. But the intrigues of an emiſſary laid diſcouragements in the way, by ſhewing the folly of expecting a great preſent revenue from a country yet in its infancy, and conſequently poor.[21] The province of New-Hampſhire having undergone ſimilar revolutions, its proprietary co-operated with Gorges in procuring redreſs of wrongs, which equally preſſed both. The general-court, relying on its own conſtruction of its patent,

patent, which the world conſidered as equally frivolous as intereſted, though it condeſcended to explain its conduct and pretenſions, declined long either to give them poſſeſſion or to appoint deputies to defend its proceedings. That monarch was wearied with continued ſolicitation. And the committee of plantations at length determined to propoſe to that body, either to receive commiſſioners, authoriſed to decide amicably the claims of all, or to ſend agents to anſwer before the king in council: Adding, what was probably deciſive; "that, ſhould it ſtill "prove refractory, notwithſtanding the equity of this overture, every "means would be uſed to interrupt the trade of the colony, which by "the acts of trade may be given it." After ſixteen years of the various exertions of the whole energy of government, to procure what was ſo extremely reaſonable, the general-court, upon great conſideration, ſent agents to England, who were empowered to conſent to the final ſettlement of claims that had at laſt become ſerious. What a view do theſe notices diſplay of the weakneſs of the one adminiſtration and of the vigour of the other. Men, who did not ſufficiently regard either the infelicity of the times, or the natural difficulties attending the exerciſe of diſtant power, remarked; that the ſyſtem which cannot give redreſs to the injured, and protection to all, ought no longer to exiſt.

When the diſputants appeared in July, 1677, before Rainsford and North, the two chief-juſtices, to whom this controverſy, famous rather for the length than the difficulty of it, was referred, a ſtriking ſcene enſued. The agents at once diſclaimed pretenſions which had been ſo long defended with the greateſt ability as ſacred; becauſe their counſel informed them that they could not poſſibly be defended before ſuch judges. Maſon, by the ſame advice, waved his claim to the government of New-Hampſhire, which the council of Plymouth could not convey to others, becauſe it was a truſt not ſubject to alienation. The limits of Maſſachuſets were reſtrained to the literal expreſſion of its charter, and its juriſdiction within the boundaries of the ſoil. The province of Main was adjudged to Gorges, with ſuch right of government as had been granted by the patent under which he claimed. But it was deemed improper to decide with regard to the rights of the poſſeſſors of the territory, becauſe they

they were not preſent: And all parties were directed "to have recourſe "to the courts of juſtice, upon the place, for the deciſion of the queſ-"tion of title to the poſſeſſion."[23] Nothing could be more plauſible, and yet nothing could be more unjuſt, than this advice. Thoſe eminent lawyers ſeem not to have reflected, that they directed the claimant to bring his action before the men who actually occupied themſelves the diſputed property; becauſe the proprietary claimed a province. This obſervation diſcloſes a defect in colonial juriſprudence, which has remained without remedy to the preſent times. No ſuit could be inſtituted in Engliſh judicatories, becauſe the wiſdom of the law of England had provided, that all diſputes, with regard to territory, ſhall be decided by jurors, who lived in its vicinity: And univerſal juriſprudence has reprobated all perſons as judges, who are themſelves intereſted in the controverſy. An act of the ſupreme legiſlature was therefore neceſſary to eſtabliſh a new juriſdiction, to obviate ſo great a difficulty, which has been at all times felt and complained of; becauſe the advice before-mentioned was afterwards followed as a proper example, though contrary to every principle which ſhould govern in the adminiſtration of juſtice. The equity of this deciſion, however, commanded the acquieſence of all parties: The one ſaw difficulties enow which yet remained, becauſe the others had obtained only a ſimple declaration in their favour, that could not be eaſily executed.

Long had Charles II. been in treaty with the proprietors of New-Hampſhire and Main. But his poverty, which was well known in New-England, the wars that happened in the mean time, the intrigues of his adverſaries, the high expectations of the owners; all prevented the completion of a buſineſs which would have probably proved ſo advantageous both to prince and people. For years had the friends of Maſſachuſets warned her of the danger of ſuffering ſuch claims to exiſt, and requeſted that authority to treat with Gorges which was given them in Auguſt, 1674.[24] The vigorous proceedings before-mentioned haſtened her ſteps, becauſe ſhe ſaw the danger increaſe. And when it was perceived that the judges would decide in his favour, becauſe the validity of his title was apparent, the agents prudently purchaſed what had been ſo long oppoſed.

oppoſed. It was to no purpoſe for that monarch to remonſtrate, in terms of great diſcontent, againſt a conduct ſo contrary to every principle of fair dealing, ſo diſobliging to himſelf; to inſiſt that what had been thus acquired contrary to his aſſent, perhaps to law, ſhould be ſurrendered.[25] The general-court had now acquired the legal right, in addition to long poſſeſſion; and, having determined to retain what its ſuperior addreſs had gained, it eaſily found excuſes to palliate what it could not defend. Neither the great judges, who decided that famous controverſy, nor the wiſeſt men of thoſe days, appear to have been governed by that uniformity of principle, from which ſo many benefits are derived to the ſubjects of a free country, which conſtitutes the chief excellence of the law as a ſcience. It was admitted by every one, by the greateſt lawyers and ſtateſmen of the times, that the Plymouth company could not transfer the powers of government either to Maſon or to Gorges. Was it not equally apparent that the latter was as little able now to convey to others the truſt repoſed in his anceſtor? Yet, during the contentions of that period, this objection ſeems not to have occurred, though ſo extremely obvious, perhaps juſt.

The general-court applied now, with an ability equal to the prudence with which it had made the acquiſition, to derive ſome advantage from what had coſt ſo much money and vexation. It properly rejected the council of thoſe who adviſed, "that it ſhould be ſold again to the higheſt "bidder, towards reimburſing the prodigious expence of defending it:" And it determined to govern Main in the form of a province. Nothing could be more juſt or wiſe than its policy with regard to this colony when it was formerly annexed to Maſſachuſets: Nothing can ſhew more clearly how much communities, as well as individuals, are carried out of the paths of rectitude by ambition, than the preſent reſolution. A colony, on which were conferred even greater privileges than were enjoyed by thoſe who were not freemen, was now reduced to the condition of a mere dependency. Being no longer allowed repreſentatives in the general-court, it was bound by rules, and obliged to pay taxes, to which it had not conſented. As proprietary, the general-court appointed the deputy-governor preſident of Main; it named officers; it eſtabliſhed various

rious judicatories; and juſtice was adminiſtered in the mode preſcribed by the patent of Gorges. No aſſembly, of which the repreſentatives of the people compoſed a conſtituent part, was allowed, becauſe none had been mentioned in the original grant. But they did not ſubmit peaceably to this degrading ſtate of ſervitude, becauſe they felt an inſult offered to their underſtandings as men, while they were bereaved of their rights as citizens.[16] And ſad experience convinced them of a truth which they could not foreſee, that the general-court was as prompt to ſupport its authority by the ſword, as it was ever ſlow to yield obedience to the rules preſcribed by the parent-ſtate. Nothing is more amuſing than to obſerve how frequently each of the contending parties, during the foregoing controverſy, inſiſted, that it alone was ſupported by the voice of *the people*: And, in order to demonſtrate this fact, each procured, on all occaſions, addreſſes from the inhabitants in ſupport of its own pretenſions. But they now diſcovered, when it was too late, that they had only been converted into inſtruments to procure the gratification of others, as had happened at all times, and in every quarter of the globe: It is to be lamented that ſucceſſive examples are held up to the multitude to ſo little purpoſe. While Main remained ſubject to Maſſachuſets, it diſcovered by experiment what hiſtory might have taught, the great difference which there is, with regard to freedom and happineſs, between being the ſubjects of a prince, and being the ſubjects of a people. It was relieved a few years afterwards from this deplorable ſtate of ſervitude, when, by the diſſolution of the charter of its ſuperior, the colonies of New-England were put upon an equal footing. And now the truſt of its government, attended by the property in the unappropriated lands, was deemed to revert to the king, whoſe predeceſſor had given both away.[17]

When the deciſion before-mentioned was confirmed by Charles II. the province of New-Hampſhire was left without a regular government; becauſe the juriſdiction of Maſſachuſets was now reſtrained to the limits of its ſoil, extending northward to the diſtance of three miles beyond the Merrimack. Having endeavoured in vain to obſtruct the royal deciſion in favour of Maſon, with regard to the property of the lands, the a-

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gents repreſented, that New-Hampſhire was inhabited by a race of men of mean eſtates, and was occupied only by four towns of little commerce, which, ſince they had been long under the juriſdiction of Maſſachuſets, wiſhed to continue ſo. Thus, without reflecting that puniſhment was due to uſurpation of the rights of others and to the vexation of delay, with a happy moderation they ſolicited reward: They aſked it as a thing that would be deemed a mighty favour, that the power of coining might be confirmed to the general-court; that New-Hampſhire might be added to its juriſdiction. But, though the towns of Dover and Portſmouth, of Exeter and Hampton, had been prompted to ſecond their prayers, becauſe they were equally intereſted, the ſolicitations of the agents proved fruitleſs. That monarch had now too much experience of the principles and practice of the general-court, to add ſtrength to a power which he had ſo long wiſhed to weaken: He recollected, with diſapprobation, the late purchaſe of Main: He meditated important projects of reformation, which he every day diſcovered to be more neceſſary. Far from gratifying thoſe who had given him reiterated offence, he informed that body, that it muſt not expect the requeſted annexation of New-Hampſhire, becauſe he had determined to eſtabliſh ſuch a method as ſhall be of moſt benefit and ſatisfaction to the people there: He commanded that all commiſſions for governing this province ſhould be inſtantly recalled.[28] We may infer what impreſſion the repeated provocations of the general-court had made on the mind of a prince who was not remarkable for ſteadineſs, when we ſee him purſuing ſo long, with ſuch uniformity, one plan of reformation.

Influenced by all theſe motives, it was determined, after great deliberation, in July, 1679, "to eſtabliſh a temporary adminiſtration in New-"Hampſhire, which may have a more immediate dependence on regal "authority."[29] Nothing could be more wiſe than this policy: It is only to be lamented that it was not executed with a prudence equal to the importance of it. The whole executive power was now inveſted in a preſident and council, to be appointed by the king. Inſtead of inquiring for men whoſe principles attached them to the Engliſh nation and to Engliſh laws, the ſtateſmen of thoſe days ſent to Wapping for recom-

mendations of proper perſons to diſcharge that weighty truſt. John Cutt was accordingly appointed preſident; Waldron, Martin, Vaughan, and others, who were all either members or officers of the general-court, who were governed by its maxims, who were enthuſiaſtically attached to the tenets of the Independents, were appointed counſellors.[30] Such were the men who were now empowered to adminiſter juſtice according to the laws of England, the authority of which they did not admit, "as far as the circumſtances of the place will admit:" Allowing appeals to Engliſh judicatories, which they deemed inconſiſtent with their rights, becauſe contrary to their projects of independence. They were empowered to call an aſſembly. The legiſlative power of the colony was veſted in the preſident, the counſellors, the burgeſſes of the towns. And theſe were authoriſed to levy taxes for the ſupport of government, to make laws for the intereſt of the province: "Tranſmitting them, "by the firſt ſhip to England, for confirmation." Thus was erected for the firſt time, in New-England, a royal government, wherein the juſt prerogatives of the crown and the conſtitutional privileges of the people were equally attended to, and ſuch a happy balance of power eſtabliſhed as to make oppoſition to the laws a crime in the ſubject. In addition to the ſecurity of civil rights, liberty of conſcience was at the ſame time allowed to every Proteſtant, while the church of England was particularly encouraged. But one matter of conteſt ſtill remained, which embittered the enjoyments of New-Hampſhire. The property of the ſoil was claimed upon very oppoſite pretenſions. The inhabitants had long poſſeſſed it either under grants from the original occupiers or from Maſſachuſets: As general proprietary, Maſon demanded what his patent from the Plymouth-company had conferred: And the titles of both were equally juſt; the former enjoying an equitable, but the latter, a legal right. Never was there a contention fitter for amicable compromiſe than the preſent; wherein both ſhould have ſacrificed much to peace, becauſe much was controverted, and much might be loſt. And Charles, with the attention of a father, obliged Maſon *to agree* to demand nothing for the paſt, nor to moleſt the landholders for the future; "provided they "ſhould pay ſixpence in the pound of the juſt value of their poſſeſ-

"ſions."

"ſions."[31] But an offer, which has the appearance of ſo much moderation and equity, was only derided by a people, who were animated by principles which never recede, becauſe they claim the gifts of ſociety as the rights of nature.

Edward Randolph had the pleaſure, becauſe every thing gratified him which mortified the general-court, to deliver the commiſſion abovementioned to Cutt, the preſident, in December, 1679. What might have been foreſeen, perhaps prevented, now enſued. Waldron, Martin, and other counſellors, deſired time to conſider whether they would be inſtrumental in eſtabliſhing ſo great an innovation. They conſulted the wiſe men of Boſton, with regard to what they ſhould do on that emergency. And they not only refuſed themſelves to admit the authority of the commiſſion, but adviſed the preſident alſo to diſown it, hoping that the meaſure might be defeated by the refuſal of all to act. But, having conſulted the principal inhabitants, he declared his reſolution to diſcharge the duty which did him ſo much honour, and he required all to aſſiſt him to execute the royal intentions. Many both rejoiced and mourned, as their various paſſions were affected. The advice of the miniſters was now aſked; who gave it as their opinion, that thoſe who had ſo lately declined to accept the commiſſion ſhould now aſſume the government, leſt the preſident ſhould fill up their places: Giving as a reaſon, what ſhews the motives by which all were influenced; "that it was better for thoſe "to govern, who had formerly acted under Maſſachuſets, than for others "of different principles to command them." And theſe reaſons were tranſmitted to Boſton to ſhew the neceſſity of their preſent conduct. When they did condeſcend to exerciſe their duty as counſellors, they refuſed to take the accuſtomed oaths as the Engliſh law required, becauſe liberty of conſcience was allowed them.[32] Wiſe men ſaw and regretted the anarchy that muſt enſue from the eſtabliſhment of a government, however ſalutary and legal, in oppoſition to the principles of a people.

Though the form was changed, yet ancient maxims continued to give a tone to every act of the adminiſtration. An aſſembly was ſoon called, which, by means of the uſual intrigues, was compoſed of perſons extremely favourable to the projects of thoſe who now engroſſed power.[33]

They immediately voted an addreſs to the general-court; apologizing " for the late turn of Providence made among them by the all-ordering " hand;" thankfully acknowledging former kindneſs, in taking them under its government; aſſuring it " that they would have rejoiced had " it ſeemed good to the Lord and his majeſty to have ſettled them in their " ancient capacity, as it was merely in ſubmiſſion to divine Providence, " to their ſovereign's commands, whoſe ſubjects they all were, that they " ſubmitted to their preſent ſeparation." To Charles they at the ſame time tranſmitted an addreſs; couched in ſimilar language, and breathing a ſimilar ſpirit. But, while they were ſo grateful for favours conferred, they were extremely ſlow in conforming to preſent requiſitions. They paſſed no laws during this firſt ſeſſion of aſſembly; they oppoſed all appeals from the courts of the colony to the judicatories of England: Giving as a reaſon; that the ſhortneſs of the ſummer had prevented them from doing the one, and they were afraid that the other might obſtruct juſtice.[34]

When, however, they did ſome time after eſſay their legiſlative talents, they had not the good fortune to pleaſe. The laws which they tranſmitted,[35] in conformity to their conſtitution, were diſapproved of by the lords of the committee of plantations, in December, 1681, " both as " to ſtile and matter," becauſe they were conſidered " as unequal, in- " congruous, and abſurd." The act, which, in the true ſpirit of ſelfiſhneſs, confirmed to the inhabitants the titles to their lands without the conſent of the proprietary, was juſtly diſallowed. Complaints were at the ſame exhibited againſt thoſe who had acquired pre-eminence ſubſequent to the death of Cutt, who was allowed to have been an " honeſt " man and a loyal ſubject," as favouring too much ancient principles of government, as oppoſing the operations of the acts of navigation. The ſame committee reported: That various irregularities had been carried on by thoſe at preſent in the government, which were neither conſiſtent with the king's ſervice nor with the intended ſettlement of the province, which precluded hope of ſuch a regulation of affairs as their dependence and the welfare of the place required.[36] And theſe were deemed ſufficient reaſons, becauſe they were founded in truth, for putting an end to an adminiſtration

miniſtration which had ſhewn ſo little inclination to promote the views of thoſe who had given it birth. The ſtateſmen of thoſe days lamented, that they had put truſt in men, who only acted according to their principle when they oppoſed the laws and government of England.

In order, therefore, to prevent farther irregularities, it was determined, in the beginning of the year 1682, to appoint "an able perſon "and of tried fidelity to ſettle that place." And Lionel Cranfield was ſoon after appointed lieutenant-governor and admiral of New-Hampſhire during pleaſure. His commiſſion was nearly the ſame as thoſe of other royal governors; his inſtructions were copied with little variation from thoſe given to the chief rulers of Virginia:[37] And the form of government now eſtabliſhed was exactly the ſame. The governor and council were moreover empowered to continue the collection of former taxes, for the ſupport of government, till others ſhall be raiſed by the aſſembly. The governor was alone authoriſed to appoint cuſtom-houſes; to cauſe every one to obey the acts of navigation; to nominate the clerk of the aſſembly. And not only was the former commiſſion revoked, but all laws paſſed under its authority were annulled: Giving for a reaſon, what ſhewed the extent of the diſapprobation of the prince; "that others "more ſuitable to the dignity of government might be enacted." The proprietary, who had ſurrendered the fines and forfeitures for the ſupport of government, was now placed at the head of the council, was enabled to chooſe two burgeſſes for the aſſembly: And the governor was required to adjuſt, if poſſible, the differences between him and the people, in order that he might be reſtored to his right, and they to peace. The other colonies of New-England were informed of the appointment of a royal governor for New-Hampſhire, and commanded to give every aid to this province, in caſe it ſhould be attacked. And ſuch was the form of government, ſuch were the inſtructions, which a governor, without a ſalary, without power, and without a friend, was appointed to ſupport and to execute!

When Cranfield arrived, in October, 1682, he found the province only of the breadth of ſeventeen miles from the northern line of Maſſachuſets to the river Piſcataqua, which divided it from Main; occupied by four townſhips, containing four thouſand inhabitants, muſtering four hundred

hundred and fifty militia, ſo extremely poor, from the devaſtations of the late Indian war, that they were ſcarcely able to pay their miniſters ſalaries. But, when he ſpoke contemptuouſly of the country which he had been ſent to rule, he ſeems not to have reflected, that all colonies had once known the like paucity of numbers, the ſame weakneſs, and the ſame poverty; animated only by a diſſimilar ſpirit from that of New-Hampſhire, which now diſdained that independence on her neighbours that other provinces had contended for with enthuſiaſm. And other plantations, actuated by very different maxims, had not complained, even in their weakeſt days, of their inability to defend their frontiers againſt the attacks of a foe that has never proved dangerous, except to the effeminate, the factious, or the cowardly. When New-Plymouth conſiſted only of two hundred perſons of all ages and ſexes, it repulſed its enemies and ſecured its borders with a gallantry worthy of its parent country, becauſe it ſtood alone in the deſert without hope of aid. The moment a nation thinks itſelf feeble, and unable to defend itſelf, it is already undone. The governor no ſooner communicated his commiſſion, in the accuſtomed manner, and deſired the counſellors to adminiſter the uſual oaths, than Waldron, the late preſident, pauſed; deſiring to know firſt, "by what method the people were to be governed." But the prudent firmneſs of Cranfield commanded ſubmiſſion on that occaſion, as it generally does. And he commenced his adminiſtration by ſuſpending, agreeably to his orders, thoſe members of his council, who, under the late commiſſion, had given ſo little ſatisfaction. He now endeavoured, by his politeneſs to all, to acquire the good will of every one; by his attentions, that have ſo great an effect on the moſt "rugged people," to gain the confidence of the party which adhered to Maſſachuſets, which was much the moſt potent from its numbers, but more from its enthuſiaſm. The miniſters and other leaders were equally attentive to him, becauſe "they deemed him gained over to the Independents." But, the moment he avowed his purpoſe to execute the acts of navigation, and to ſupport the indefatigable Randolph, the collector of the cuſtoms, he not only loſt their confidence, but incurred their hatred.[38] And now commenced a train of vexations, that ruined his fortune and drove him from

from the province. It was experience that convinced him, that every one was reduced to the ſad dilemma of either acting with ſuch a people or becoming the object of their perſecution.

As the governor was not yet altogether deſerted by hope, he called his firſt aſſembly in December, 1682. And now he diſcovered that the democratic branch of it was compoſed of eleven members only, who were governed entirely by his opponents. Having ſat three weeks, without either paſſing laws, or granting money for the uſes of the ſtate, he diſſolved them; never reflecting, that, though ſuch a meaſure may ſhew reſentment, it can never be attended, during times of high paſſion, with any ſalutary effect. He diſcovered, when too late, that he had only gratified the wiſhes of his enemies, who derived advantages to themſelves from his imprudence: And he was aſtoniſhed to hear, ſoon after, that Gove, one of the late burgeſſes, hurried along by his paſſions, had erected the ſtandard of inſurrection. Cranfield, knowing that it was to little purpoſe to argue with armed enthuſiaſts, inſtantly proclaimed him a rebel; and, having haſtily collected a ſuperior force, he ſeized him and his followers, before they had been joined by conſiderable numbers. A ſpecial court was immediately appointed for their trial. Gove denied that he was guilty; but in ſome meaſure avowed the part he had acted; inſiſting that he only oppoſed a commiſſion, inſtructions, and governor, which were all equally unconſtitutional. He was however convicted, becauſe "ſome art had been uſed to procure a proper jury." Nine of his adherents were alſo found guilty, but recommended for mercy. Nevertheleſs the uſual advantages derived from the ſuppreſſion of unſucceſsful rebellion did not accrue from this. The chief men of the province, and, above all, the miniſters, were connected with him in the ſame party and deſigns; the great body of the people were animated by the ſame principles: And it was only the precipitation of Gove, who ſounded the trumpet of revolt without concert or preparation, that prevented the whole from joining him. While the governor hoped that an end was put to inſurrection, a conſiderable body of men riotouſly entered his houſe, in February, 1683, and "remonſtrated againſt ſeveral things in "his commiſſion." Uneaſy, and fearful for the future, he ſent Gove under

under a ſtrong guard to Boſton, with orders to ſend him to England "to be executed," in conformity to one of his inſtructions; never reflecting, that he thus converted puniſhment, which ought ever to operate as an example, into an act of revenge. He diſmiſſed ſeveral of the counſellors, becauſe he knew them to be embarked in the ſame cauſe. But the miniſters, who now ruled an enthuſiaſtic people with the ſame ſway as did the popiſh clergy during the darkeſt ages, "proved ſo "troubleſome, that he deemed it unſafe to remain any longer among "them." And he ſought an aſylum at Boſton, where was moved the ſpring which put in motion thoſe deſigns and actions that he had thus found irreſiſtible; leaving the conduct of affairs to Barefoot, the deputy-governor.[39] The principles of the Quakers and Independents enlightened men have diſcovered to be nearly allied, though they differ extremely in one important tenet: The former act paſſively in all things; the latter reſiſt on all occaſions that they perceive favourable to their views, becauſe they regard little the ties of ſociety. But the extremes of neither form ſalutary examples. And, while we cannot approve the machinations of theſe during that period, or all the means employed to enſure ſucceſs, we muſt admire their addreſs, their promptitude, their vigour, becauſe theſe muſt always be eſtimable qualities.

Cranfield's proceedings were approved by the miniſters of England. Upon his ſolicitation Gove's adherents were pardoned; and he himſelf, after lying a twelvemonth in the tower, was alſo admitted to mercy; becauſe it was hoped, that lenity might ſoften the ſpirit of a people, who could not be either perſuaded or frightened into ſubmiſſion.[40] Not long after, Weir arrived, as agent for the people, to exhibit charges againſt the governor; complaining that he had, by his ſole authority, erected various courts of juſtice, wherein he determined cauſes without the aſſembly; that he had raiſed the value of money by his ſole authority; that he had made laws without the conſent of the legiſlature; that he had diſmiſſed the counſellors without cauſe; that he had not endeavoured to reconcile the differences between Maſon and the landholders. But, while he either denied or explained thoſe various charges, for which there was great foundation, becauſe the governor and council exerciſed a legiſ-

lative

lative power, he recriminated on them " as mutinouſly inclined." But it was at length determined, by their common ſovereign, that he had not purſued his inſtructions: And he received reprimand, at the ſame time that he ſolicited reward; becauſe he had ſpent his own eſtate in the public ſervice, without perceiving how he was to be reimburſed.[41] Neither party was gratified; becauſe the hopes of both were, as uſual, diſappointed.

In the mean time the news of the proceedings in England only animated the diſſenſions of the colony. After Maſon had waited a year, endeavouring to procure the aſſent of the people to that agreement which had been made for them by their ſovereign, to no purpoſe, he adopted that mode of deciſion which they had themſelves propoſed, a trial at law. He prevailed, becauſe the law was on his ſide. Yet it was in vain to obtain judgements which the uſual officers were unable to execute. He applied to the governor for aid: But the chief magiſtrate of a country, ſuppoſed to be governed by eſtabliſhed rules, refuſed to call out the militia in ſupport of juſtice, becauſe he feared an inſurrection: And all men ſaw the extreme futility of attempting to decide on the rights of a people in oppoſition to their principles. During this ferment Cranfield called another aſſembly, in January, 1684. But, compoſed of the ſame members as the former, and governed by the ſame maxims, it acted the ſame part: It refuſed to raiſe money, or to eſtabliſh regulations, except ſuch only as were contrary to the laws of England. And he gave warning to the miniſters of his country, " that, while the clergy were allowed " to preach, no true allegiance would be found in thoſe parts." With the conſent of the council, the taxes formerly laid were continued; but it was at the ſame time deemed unſafe to collect them " without ſtrength " to countenance their proceedings."[42] Amid all theſe cauſes of weakneſs, their borders were threatened by an irruption of the eaſtern Indians; which taught every one the great danger of diſſenſions, which pointed the force of their ardour to another object.[43] Perceiving at length that his opponents had taken their ultimate meaſures, that no hope remained of obtaining their co-operation, he ſolicited his recal in language which ſhews the ſtate of his own mind and that of New-

Hampſhire: "I ſhall eſteem it, ſaid he, the greateſt happineſs in the "world to be allowed to remove from thoſe unreaſonable people; be- "cauſe then all men will ſee, that it is what is enjoined in the royal "commiſſion which they cavil at, and not my perſon; and time will "ſhew, that no one ſhall be accepted by them who puts the king's com- "mands in execution." His ardent prayers were granted; and Bare-foot was appointed deputy-governor, in June, 1685.[44]

During this ſtate of things, that province was annexed to Maſſachuſets; becauſe the people wiſhed to inhabit rather the county of a neighbour, than to enjoy the gratifications attending on real independence. During the ſucceſſive adminiſtrations of Dudley and of Andros, the ſame meaſure, either of juſt government or degrading miſrule, was allotted to both. But the revolution at Boſton once more conferred that ſeparate ſtation among the provinces of the Engliſh empire againſt which they had contended with ſo much zeal. Yet, as New-Hampſhire had no patent to reſume, it waited patiently for its fate from the wiſdom of William. And, being excluded by this monarch from the charter granted to Maſſachuſets, it has continued to the preſent time a different though inconſiderable ſettlement; "irregular, as we are aſſured, and factious in its "œconomy, affording no precedents that may be of exemplary uſe to "other colonies."

AUTHORITIES AND NOTES.

[1] Hutch. Hiſt. Maſſ. 1 v. p. 103-5. who cites ancient MSS. Joſſelyn, p. 20; and ſee notes of thoſe various grants in N. Eng. Pap. 2 v. p. 1-20. — [2] Same pap. p. 2-6. — Henry Joſſelyn, and other agents of John Maſon, made various grants of land during the year 1637, which were given in evidence at the trials of the proprietor's rights, in 1682. — N. Engl. Pap. 3 v. p. 566. — The oldeſt record of New-Hampſhire is dated in 1640. — Ib. p. 841. — Hence we may infer the prior ſtate of the colony; becauſe, what muſt be the ſtate of ſociety in that country, which poſſeſſed no written memorials of its ordinary tranſactions?

[3] Ib.

[3] Ib. p. 4-6; Joſſelyn, p. 256; and Hutch. Hiſt. Maſſ. 1 v. p. 176. — [4] See the combination, in Hutch. 1 v. p. 107. — [5] The compact and their proceedings are in Ib. p. 106-7. — [6] See the relation of the royal commiſſioners, in Col. of Pap. by Mr. Hutchinſon, p. 422. — [7] Hutch. Hiſt. Maſſ. 1 v. p. 108-9. — [8] Neal's N. Eng. 1 v. p. 210. — [9] See the N. Eng. Pap. 4 v. p. 470-4. — [10] Joſſelyn, p. 199-202. — [11] Hutch. Hiſt. Maſſ. 1 v. p. 176-7.

[12] The annexed papers throw conſiderable light on this obſcure portion of colonial hiſtory; they ſhew the extent of the claims of Maſſachuſets, and the arts by which they were ſupported. — From N. Eng. Pap. 4 v. p. 487.

Proteſt of the general-court againſt the pretenſions of the family of Gorges.

" Whereas we have declared the right of the Maſſachuſets government to the towns of Wells, Cape Porpus, and Saco, and the inhabitants thereof, being ſummoned, did appear before us at Wells, on the 5th of July, 1653, and acknowledged themſelves ſubject thereunto, and took the oath of freemen and fidelity to the ſaid government, which by us their commiſſioners have appointed and ſettled a government over them: We do therefore hereby proteſt againſt all perſons whatſoever that ſhall challenge juriſdiction, or exerciſe any act of authority over them, or over any other perſons to the northward, inhabiting within the limits of our patent, which doth extend to the latitude of forty-three degrees, forty-three minutes, and eleven ſeconds, of northerly latitude, but what ſhall be derived from us the commiſſioners, or of the general-court of the Maſſachuſets. Given under our hands at Wells, in the county of York, the 6th of July, 1653.

Tho. Wiggan, Rich. Bellingham,
Ed. Rawſon, Dan. Deniſon,
Brian Pendleton."

Proclamation, declaring John Bonithon a rebel.

It not only ſhews how the general-court treated thoſe who refuſed to obey, but demonſtrates how little it availed a man in thoſe days to plead

that he had not conſented. For, Bonithon had never ſubmitted to its authority, becauſe he was attached to the rights of the proprietary.

At a general-court, held at Boſton, 20th of May, 1658.

" Whereas the town of Saco, (within the line of our patent,) in or near the bounds whereof John Bonithon liveth, have generally ſubmitted themſelves and their lands to the government and juriſdiction of the Maſſachuſets: And whereas there are great and frequent complaints made to this court, by ſeveral credible perſons, that the ſaid Bonithon, attending no government, doth moleſt both his neighbours and others that do occaſionally traffic in thoſe parts; and, by his outrageous carriage, hath maimed ſome and put others in danger of their lives, by his lawleſs and imperious actions. And whereas legal courſes have been taken and much patience hath been uſed for his reducement into ſome tolerable demeanour, hitherto not only in vain, but, inſtead of compliance, he hath ſent contemptuous and railing returns to this government or authority here: Whereupon this court, conſidering the premiſes, doth declare the ſaid John Bonithon a rebel, or common enemy, and intend to proceed againſt him accordingly: Yet, becauſe this court is very lothe to uſe extremity, (if it may ſtand with juſtice, peace, or their honour, to exerciſe any farther delay,) therefore this court doth hereby expreſs themſelves willing to give the ſaid Bonithon time, till the firſt day of September next, peaceably to render himſelf into the hands of the governor and ſuch other of the magiſtrates as ſhall be then in or near Boſton: That his caſe, being duly and ſeaſonably conſidered, there may be ſuch an iſſue put to the ſame as ſhall be meet: Which clemency, thus tendered, if neglected or contemned, it is reſolved by the court to proceed againſt him as a rebel or common enemy to the people of theſe parts of New-England, this government, and eſpecially the people inhabiting near unto the place of his reſidence. And farther, this court doth empower any perſon that hath ſubmitted to this government, after the ſaid firſt day of September to apprehend the ſaid Bonithon by force, and bring him alive or dead to Boſton; declaring and proclaiming, that whoſoever ſhall ſo do ſhall have twenty pounds paid him out of the common treaſury, which ſhall be levied, with other charges, upon the ſaid Bonithon his eſtate.

eſtate. This to be proclaimed forthwith in Boſton, Salem, Portſmouth, York, and Saco. By the court,

EDWARD RAWSON, Secretary."

A ſummons, requiring various towns to ſubmit.

It evinces with what reluctance many of the inhabitants of Main ſubmitted to Maſſachuſets.

" Whereas the general-court hath formerly declared the right of juriſdiction over the inhabitants of Black-point, Blue-point, Richman's-iſland, of Caſco, and of the Clap-board-iſlands, or by what name or names ſo ever called or known, to the latitude of 43 d. 43 m. and it was by the commiſſioners of the county-court of York laſt ſummer by their public act declared, that all ſuch inhabitants, as failed to appear by themſelves or delegates at the general-court, in October, 1657, and anſwer thereunto, ſhould thenceforward be included and concluded within the juriſdiction of Maſſachuſets; which order, the ſaid inhabitants not attending, this court underſtands and accounts them to be in the ſame condition, in point of ſubjection, as the reſt of the people of this juriſdiction are generally in, ſaving, they want ſuch privileges, which others in the county of Yorkſhire have, who ſubmitted themſelves: Yet, notwithſtanding, by favour of this court we do intend to give a farther opportunity to ſuch, who perſonally appear at the next county-court, holden at York, upon the 4th day of July next, yielding their conſent to be under this juriſdiction, to have like privileges as the reſt of the inhabitants of the county of Yorkſhire have had granted unto them. You are, therefore, hereby required to ſummon all and every the inhabitants of the ſaid places reſpectively, perſonally to appear at the next court, to be holden for the county of York, at the town of York; which court hath ſpecial commiſſion from the general-court to ſettle government throughout the whole county, to the uttermoſt extent of their line eaſtward. Hereof you are not to fail at your peril. Given the 11th day of June, 1658."

To the marſhal of the county of York, [Main.]

Commiſſioners of the general-court, { Sam. Symonds. / Tho. Wiggan. / Ed. Ruſhworth.

" Col-

[14] Collection of Papers, by Mr. Hutchinſon, p. 314-17-20. — [15] The petition to parliament is in the N. Eng. Pap. 4 v. p. 500. — [16] Col. of Pap. by Mr. Hutchinſon, p. 317. — [17] Ib. p. 385-96. — [18] N. Eng. Pap. 4 v. 507: and ſee the relation of Archdale, one of Gorges's commiſſioners, giving an account of his tranſactions with the general-court on this ſubject. — [19] The commiſſioners narrative, with regard to New-Hampſhire and Main. — Col. of Pap. by Mr. Hutchinſon, 422. — [20] Ib. p. 427, where ſee colonel Nichols's letter to the general-court.

[21] The annexed letter, from the royal commiſſioners to the general-court, will diſplay an admirable picture of the principles and practice of all the parties. — From N. Eng. Pap. 3 v. 28.

" Gentlemen,

We have received a letter from your marſhal, ſubſcribed by the ſecretary, ſo full of untruths, and in ſome places wanting grammar conſtruction, that we are unwilling to believe it penned with your knowledge and approbation, (though in the name, and by the order, as it is ſaid, of the general-court). Though it was great reaſon and high time for us to give over treating in private with thoſe, who, by the ſound of trumpet, denied that authority which the king had over them, and by which we were to act; yet, neither that denial nor any thing they can do can enervate the king's commiſſion, or hinder us from obeying the king's commands, as near as we can.

The fixing, naming, and owning a boundhouſe, three long miles north from Merrimack-river, about twelve years together, by the corporation of Maſſachuſets, after the fixing of which bound many patents were granted by the council of Plymouth and by the king, muſt neceſſarily determine the limits of the ſaid corporation, and anſwer all the falſe and fraudulent expoſitions of the charter. We now let you know our judgements, how much thoſe that have penned that letter were miſtaken, though for ſome reaſons we will not publiſh it as our decree.

That laſt letter we received from his majeſty was the ground of the warrant we ſent to Portſmouth, and of thoſe we ſent to ſeveral other towns. His majeſty's commands are and ſhall be our directions. When we

we are convinced of our error, we ſhall be ready to acknowledge and amend it; but ſhall not concern ourſelves with your ſenſe in this, who have already, and, we fear, wilfully, miſconſtrued too many of his majeſty's moſt gracious letters.

That duty, which we owe to God, to the king, to all his ſubjects, conſtrains us to perſuade you not to ſuffer yourſelves to be ſo much miſled *by the ſpirit of independency*: The king did not grant away his ſovereignty over you when he made you a corporation. When his majeſty gave you power to make wholeſome laws, and to adminiſter juſtice by them, he parted not with his right of judging whether thoſe laws were wholeſome, or whether juſtice were adminiſtered or no. When his majeſty gave you authority over his ſubjects as lived within the limits of your juriſdiction, he made them not your ſubjects, nor you their ſupreme authority: That prerogative his majeſty certainly reſerved for himſelf; and this certainly you might have ſeen, if ambition and covetouſneſs, or ſomething as ill, had not darkened both your eyes and underſtandings.

Remember, we pray you ſeriouſly, that the pardon you ſo much pretend to from his majeſty's clemency, in his letter of June, 1662, was promiſed to you upon the condition of being for the future his good ſubjects; which muſt neceſſarily imply obedience: Striving to graſp too much may make you hold but little.

It is poſſible that the charter which you ſo much idolize may be forfeited; and it may probably be ſuppoſed that it hath many ways been forfeited, while you have cleared yourſelves of thoſe many unjuſt oppreſſions, violences, and blood, for which you are complained againſt. To which complaints you have refuſed to anſwer until you have his majeſty's pardon; which can neither be obtained by, nor effectual to thoſe who deny the king's ſupremacy.

The deſerved deſtruction and puniſhment of ſome of thoſe, who of late made uſe of the king's authority to oppoſe his majeſty's power, and raiſed armies and fought againſt his majeſty, and yet pretended the defence and ſafety of the king, we think might deter all from broaching or acting according to ſuch illuſive and deſtructive ſophiſms. Many of your

your actions, and the warrant ſent to the conſtable of Portſmouth, the 12 July, 1665, give us juſt ground to fear, that, if you had power, you would try your ſucceſs the ſame way.

Gentlemen; remember, we pray you, that you profeſs yourſelves to be Chriſtians, and pretend to be of the beſt ſort; pray make it apparent that you are ſo, by obedience to the king's authority, by your peaceableneſs towards your neighbours, and by your juſtice among yourſelves, which are Chriſtian virtues, that men may ſee your good works, and then, &c.

The other colonies have ſet you ſo many good examples, even that of Rhode-Iſland, one whom you have ſo long deſpiſed and diſowned, and now lately derided for its ſubmiſſion to his majeſty. The dangerouſneſs of theſe ways you are in hath extorted thus much from us at preſent for caution. But the particulars of your letter we refer to be examined in another place.

In fine, we deſire and in his majeſty's name require you not to contradict thoſe orders which we made by virtue of his majeſty's commiſſion, nor to diſturb the peace and quiet of thoſe whom we have taken under his majeſty's government, nor to moleſt thoſe who, in obedience to his majeſty's authority, have obſerved any orders or warrants made by us. And we aſſure you, that, as you approve yourſelves his majeſty's good ſubjects, we ſhall approve ourſelves your real friends, ready to ſerve you.

Piſcataqua-River, 16 July, 1668.

Rob. Carr,
Geo. Cartwright,
Sam. Maverick."

[20] See Pateſhul's depoſition in N. Eng. Pap. 2 v. p. 121. — [21] Collins's letter in coll. of pap. by Mr. Hutchinſon, p. 451. — [22] N. Eng. Ent. 1 v. p. 23. and throughout.

[23] The following *Report of the two chief-juſtices, touching the pretenſions of Gorges and Maſon againſt the government of Boſton*, not only ſhews preciſely how this controverſy was ſettled, the 17th of July, 1677, but illuſtrates ſome parts of the foregoing Annals, and confirms the reaſonings in the text. — From N. Eng. Ent. 1 v. p. 213.

" In

" In obedience to your lordſhips order we appointed a day for hearing of all parties and conſidering the matter referred, having received from them ſuch papers of their caſes as they were pleaſed to deliver. At which time all parties appearing, the reſpondents [the agents of the general-court] did diſclaim title to the lands claimed by the petitioners. And it appeared to us, that the ſaid lands are now in poſſeſſion of ſeveral other perſons not before us. Whereupon we thought not fit to examine any claims upon the ſaid lands; it being, in our opinion, improper to judge of any title of land without hearing the ter-tenants, or ſome other perſons on their behalf: And, if there be any courts of juſtice upon the place, having juriſdiction, we eſteem it moſt proper to direct the parties to have recourſe thither for the deciſion of any queſtion, until it ſhall appear that there is any juſt cauſe of complaint againſt the courts of juſtice, or grievance.

We did, in preſence of the ſaid parties, examine their ſeveral claims to the government; and the petitioners having waved any pretence of a grant of government from the council at Plymouth, wherein they were convinced by their own counſel that no ſuch power or juriſdiction could be transferred or aſſigned by any colour of law.

The queſtion was reduced to the province of Main, whereto the petitioner Gorges made his title by a grant from King Charles I. in the 15°. reg. made to Sir Ferdinando Gorges and his heirs, of the province of Main and the government thereof.

In anſwer to this, the reſpondents alledged, that long before, viz. in 4°. Car. I. the government was granted to them; and produced copies of letters-patent, wherein it is recited, that the council at Plymouth having granted to certain perſons a territory thus deſcribed, viz. all that, &c. By the ſaid letters-patents the king confirmed the grant, made them a corporation, and gave them power to make laws for the government of the lands and the people therein.

To this it was replied, that the patent 4°. Car. I. is invalid. 1°. There was a precedent grant, 18°. Jac. of the ſame things, then in being; which patent was ſurrendered afterwards, and before the date of the other, 15°. Car. I. 2°. The grant of the government can extend no far-

ther than the ownerſhip of the ſoil; the boundaries of which are recited in that patent, wholly excluding the province of Main, which lies northward more than 3 m. beyond the river Merrimack.

We, having conſidered theſe matters, do humbly conceive, as to the firſt matter, that the patent 4°. Car. I. is good, notwithſtanding the grant 18°. Jac. for it appeared to us, from the recital in the patent 4°. Car. that the council of Plymouth had granted away all their intereſt the year before: And it muſt be preſumed that they deſerted the government; whereupon it was lawful and neceſſary for the king to eſtabliſh a ſuitable frame of government, according to his royal wiſdom, which was done by that 4°. Car. I. making the adventurers a corporation upon the place. As to the 2d matter, it ſeems to us to be very clear, that the grant of the government 4°. Car. extends no farther than the boundaries expreſſed in the patent; and theſe boundaries cannot be conſtrued to extend farther northward along the river Merrimack than 3 Engliſh miles.

For the north and ſouth bounds of the lands granted, ſo far as the rivers extend, are to follow the courſe of the rivers, which make the breadth of the grant; and the words, deſcribing the length to comprehend all the lands from the Atlantic Ocean to the South Sea, of and in all the breadth aforeſaid, do not warrant the over-reaching theſe bounds by imaginary lines or boundaries. Other expoſitions would (in our humble opinion) be unreaſonable, and againſt the intent of the grant. The words, " of and in the breadth aforeſaid," ſhew that the breadth was not intended an imaginary line of breadth laid upon the broadeſt part, but the breadth reſpecting the continuance of the boundaries of the rivers as far as the rivers go; but, when the known boundaries of the breadth determine, it muſt be carried on by imaginary lines to the South Sea. And if the province of Main lies more northerly than 3 Engliſh miles from the river Merrimack, the patent of 4°. Car. gives no right to govern there; and thereupon the patent 15 Car. to the petitioner Gorges will be valid.

So that, upon the whole matter, we are humbly of opinion, as to the power of government, that the reſpondents, the Maſſachuſets, and their ſucceſſors, by the grant of 4°. Car. have ſuch right of government as is granted

granted by the ſame patent within the boundaries of the lands expreſſed therein, according to ſuch deſcription and expoſition as we have thereof made as aforeſaid. And the petitioner, Sir Ferdinando Gorges, his heirs, and aſſigns, by the patent 15°. Car. have ſuch right of government as is granted them by the ſame patent, within the lands called the province of Main, according to the boundaries of the ſame, expreſſed in the ſame patent.

Ri. Rainsford,
Fran. North."

[24] The letters, in Col. of Pap. by Mr. Hutchinſon, p. 451-72. — [25] Ib. 321. the king's letter to the general-court. — [26] Hutch. Hiſt. 1 v. p. 329.

[27] See the attorney-general Sawyer's opinion, in N. Eng. Pap. 3 v. p. 282. —— We may form ſome judgement of the populouſneſs of Main at that time, and of the greatneſs of its various towns, by the annexed *ſtate of its militia*; which was brought into the committee of colonies in the year 1675. — From N. Eng. Pap. 2 v. p. 201.

The town of	Kittery, - - - - - -	180
	York, - - - - - - -	80
	Wells and Cape Porpus, - -	80
	Saco and Winter Harbour,	100
	Black-point, - - - - -	100
	Caſco-bay, - - - - - -	80
	Sagadahock, - - - - -	80
	—— whole militia,	700.

[28] N. Eng. Ent. 1 v. p. 237-40-360. — [29] Jour. Plant. Off. 3 v. p. 29-42. — [30] N. Eng. Pap. 3 v. 424. — [31] New-Hampſhire Ent. 1 v. p. 1-12. — [32] See a narrative of the proceedings of the council, in N. Eng. Pap. 3 v. p. 426. — [33] The council tranſmitted to the different towns a liſt of thoſe who ſhould be allowed to vote. Ib. 853. — But a ſimilar practice is not to be met with in the hiſtory of the colonies, which aroſe probably from theſe perſons being only deemed freemen under the ancient government.

[34] The proceedings of the council and the aſſembly may be ſeen in the N. Eng. Pap. 3 v. p. 830-60. — As the general-court of Maſſachuſets

formed the court of appeals, ſo the aſſembly, including the delegates, regularly met to hear appeals; becauſe it purſued the former practice almoſt in every thing. — [35] Theſe laws are in the ſame bundle of papers, and appear to have been copied chiefly from thoſe of Maſſachuſets.

[36] The ſubjoined report of the committee of plantations to Charles will ſhew in what light the lords viewed the conduct of thoſe men, to whom they had delegated power. — From N. Hamp. Ent. 1 v. p. 30.

May it pleaſe your majeſty,

We have had under our conſideration the ſtate of your majeſty's province of New-Hampſhire, in New-England, which has been lately ſeparated from the province of Maſſachuſets-Bay, and is now governed by a preſident and council, appointed by your majeſty's commiſſion, dated the 18th of September, 1679. We have alſo peruſed ſeveral letters, orders of council, and acts of aſſembly, lately received from that place; [all theſe are preſerved in the bundle of New-Eng. Pap. v. 3.] whereby it appears to us, that ſome perſons now in the government there have carried on and abetted divers irregular proceedings, which are in no manner conſiſtent with your majeſty's ſervice and the intended ſettlement of that province. And we do likewiſe find the public acts and orders (the moſt part of them) ſo unequal, incongruous, and abſurd, and the method, whereby the council and aſſembly have proceeded in the eſtabliſhment of the ſame, ſo diſagreeable and repugnant to the powers and directions of your majeſty's ſaid commiſſioners, that we cannot hope for ſuch a ſettlement and regulation of affairs in that province as their dependence on your majeſty and welfare of the plantation do require, unleſs your majeſty ſhall appoint ſome fit and able perſon, of whoſe fidelity and ſufficiency your majeſty is well aſſured, who may be authoriſed by your majeſty's commiſſion and inſtructions to ſettle that place under ſuch rules of government and laws as are neceſſary for the regulation and improvement of that province: Which we humbly offer to your majeſty as the beſt means to prevent all farther irregularities, and to render that place

as

as well useful to the crown as able to defend itself from the attempts of the natives or any foreign invasion.

Council-chamber, 13th January, 1681-2. Craven, Faulkenberg, Clarendon, L. Jenkins, Ailsbury, Ed. Seymour.

[37] See Cranfield's commission and instructions, in N. Hamp. Ent. 1 v. p. 34. — [38] The governor's letters to the committee. Ib. p. 72-6-88. — [39] Ib. and see a narrative of Gove's insurrection and his trial among the N. Eng. Pap. v. 3. — The following letter, from the deputy-governor to the committee of plantations, will not only shew the unhappy state of New-Hampshire, the intrigues which disturbed its repose, but confirm the relation in the text. — From New-Hamp. Ent. 1 v. p. 88.

Right honourable,

It having pleased the honourable Edward Cranfield, esq. governor of his majesty's province of New-Hampshire, to appoint me his deputy during his absence in visiting the neighbouring colonies, I humbly presume to lay before your lordships a brief state of the condition of this province, wherein I have been an inhabitant above five and twenty years, during which time I have not only made my observations upon the humours and carriage of this people, but, by the means of some of my near relations being married into the wealthiest families of this country, I have been thoroughly informed of the intrigues and designs of the factious and malignant party, who managed all public affairs here whilst this province was under the Massachusets jurisdiction, and very unwillingly submitted to a change of government which his majesty, by his royal commission, hath established; and, though the Massachusets exercise no authority in this province, yet they influence things as they please, there being a strict confederacy between the ministers and church-members of this province and those of the Massachusets colony, who govern and sway the people as they please; no pope ever acting with greater arrogance than these preachers, who influence these people to their fanatic humours, and debauch them from their duty and obedience to his majesty and his laws, and are ever stirring them up to disloyalty, and intermedling in all civil affairs, and censuring all persons and actions that agree

agree not with their principles and peeviſh humours. Theſe their ill proceedings have given our honourable governor much trouble and diſquiet in his government; they influencing the aſſembly, that no good bills could paſs that had any reſpect to his majeſty's honour and dignity, and the good and eaſe of his ſubjects; ſo that the governor was neceſſitated to diſſolve the aſſembly; upon which followed an inſurrection, raiſed by one of the chief of that aſſembly, which, if by the prudence and vigilance of his honour had not been timely ſuppreſſed, might have been of dangerous conſequence to this place, wherein the preachers have been too buſy; and, unleſs theſe factious preachers are turned out of this province, there will be diſquiets here, and, without ſome viſible force to keep theſe people under, it will be a very difficult if not an impoſſible thing, to put in execution his majeſty's commands, or the laws of trade, which, by the countenance of one of his majeſty's ſhips in this port, would eaſily be effected. This I thought it my duty to let your lordſhips know, and ſubſcribe myſelf, &c.

WALTER BAREFOOT.

New-Hampſhire,
29th March, 1683.

REMARK. There are a great variety of letters, written in a ſimilar ſtrain, in the N. Hamp. Ent. v 1. every where.

[40] N. Hamp. Ent. 1 v. p. 95. — [41] Ib. 107-38. — [42] Ib. 115. — [43] A peace was concluded with the provincial Indians, by Barefoot, the deputy-governor, in September, 1685. N. Eng. Pap. 3 v. p. 827. — [44] N. Hamp. Ent. 1 v. p. 143-5-9. — [45] Neal's N. Eng. 1 v. p. 578; charter of Maſſachuſets annexed to its laws; and Dougl. Sum. 2v. p. 75.

New-Hampſhire has been bleſſed with only one port, which is remarkable for eaſineſs of acceſs and ſecurity from danger. It appears from a liſt, tranſmitted to the committee of colonies, that there were entered at Portſmouth, during the year, ending with April, 1681, forty-nine veſſels from 10 to 150 tons burden. — N. Eng. Pap. 3 v. p. 869. — We might thence form ſome judgement of the extent of its commerce. But there is a note, ſubjoined to the liſt, informing us, "That many of the "ſaid ſhips were driven in by ſtreſs of weather, and made no ſtay." Yet it

it muſt be remembered, that this account was drawn up by an officer, appointed by the preſident and council, who ruled prior to the appointment of Cranfield, by men who deemed it a principle of patriotiſm to repreſent *the low condition* of their country. The amount of the *provincial cuſtoms*, ſince there were no parliamentary duties then collected at Portſmouth, levied at that port, during the ſame year, ariſing from taxes on wines and liquors, and one penny a pound of the value on the firſt coſt of goods imported, was 61 l. 3 s. 1 d. money of the province, which was of leſs value than ſterling 33⅓ per cent. — Ib. p. 868.

The public expence of the province, during the year 1680, excluſive of the miniſters ſalaries and the town-rates, including the charges of the aſſembly and council, the ſtipends of the marſhal and jailers, the bounty for the killing of wolves, amounted to 131 l. 13 s. 4 d.

It appears from the ſame papers, p. 868, that the province rate on eſtates, real and perſonal, of one penny in the pound of the value, was laid on the only four towns, as follow; viz.

	£	s.	d.
Portſmouth,	29	17	3
Dover,	20	0	0
Hampton,	23	17	3
Exeter,	11	9	4
	£85	4	0

From theſe notices the politician may draw concluſions with regard to the commerce, the wealth, the populouſneſs, the power, of New-Hampſhire, during thoſe days.

CHAP.

CHAP. XVIII.

Attempts prior to the Reſtoration to ſettle the country; — by the French; — by the Engliſh. — An emigration from Maſſachuſets. — The firſt charter granted. — The coaſt acquires the name of Carolina. — Firſt tranſactions of the proprietaries. — A ſecond charter obtained. — The colony languiſhes. — Fundamental conſtitutions. — Reflexions. — Albemarle ſettled. — Its aſſembly. — Southern colony encouraged. — Diſcontents in Albemarle. — An inſurrection. — Culpeper, the principal inſurgent, tried in England. — Obſervations. — Government re-eſtabliſhed. — Sothel's adminiſtration; — and baniſhment. — Emigrations to South-Carolina. — Charles-Town founded. — An Indian war. — A parliament convened. — Pirates encouraged. — Invaſion of the Spaniards. — An attack on St. Auguſtine meditated. — Remarks. — Factions. — Their conſequences. — James II. *proclaimed. — Acts of navigation oppoſed. — A writ of quo-warranto againſt the charter. — Adminiſtration of Colleton. — Uſurpation of Sothel. — The fundamental conſtitutions abrogated.*

THAT level region, which ſtretches from the thirty-ſixth degree of northern latitude to Cape Florida, enjoys the honour of being the firſt theatre on which the three great naval powers of Europe, Spain, England, and France, contended for American ſovereignty. And their pretenſions and diſputes aroſe from the diſcoveries of Columbus, of Cabot, of Verazzan; who, being all Italians, were all equally ſtrangers in the countries, whoſe renown they extended, whoſe commerce they enlarged. The adventures of the two former have been already noticed. The exploits of the laſt originated in the anxiety of Francis I. of France to engage in every enterpriſe that could confer celebrity on his name, who employed him to diſcover ſhores then unknown and unoccupied. And, during the years 1523-24-25, Verazzan explored, with ſome degree of accuracy, the coaſt of Florida; but returned not, alas! to enjoy thoſe rewards which that munificent prince was ever happy to beſtow on ſuperior genius and fortitude. Yet Francis, any more than Elizabeth, did not live to eſta-

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bliſh any permanent colony of his ſubjects in the New World. The civil troubles which enſued turned the ardour of the French from coloniſation to objects perhaps leſs ſalutary. And it was not till the year 1562, that the illuſtrious, but unfortunate, ſtateſman, the Admiral Coligny, in order at once to promote the intereſt of his country, and to form an aſylum for the French Proteſtants, ſent a colony under the conduct of Ribaud, who built Fort-Charles on the river Ediſto. A larger emigration, compoſed entirely of the ſame ſect, was led thither, in 1664, by Laudoniere, which ſettled on the river May, that was denominated afterwards, by the Spaniards, St. Matheo. But this people not only obſerved the proceedings of the French with their accuſtomed jealouſy, but deteſted their religious tenets: And a croiſade was ſoon carried by Menandez to the weſtern world, with the ſame zeal and folly as it had been formerly conducted to the eaſt; in order at once to deſtroy the heretics, and to people Florida with genuine Chriſtians. During the year 1565, the Spaniards maſſacred the French with the ſame relentleſs cruelty as they had atchieved all their American conqueſts. Yet this ſignal act of barbarity did not rouſe the indignation of France; becauſe, during the moment of her zeal, ſhe did not conſider the Hugonots as objects of her pity. One man alone, the Chevalier Gourgues, had the ſpirit to revenge the hard fate of his friends; who, at his own expence, and without orders, conducted a faithful band againſt their perſecutors, and, during the year 1567, retaliated ſeverely thoſe miſeries which they had inflicted on others without remorſe. But, as he ſoon after evacuated Florida, becauſe his ſovereign, blinded by bigotry, did not avow his enterpriſe, his countrymen bade it a final adieu.' How often are nations, as well as men, prevented, by their momentary fits of madneſs or of faction, from perceiving the true intereſt of the ſtate, or regarding its glory! Had France given ſpirit to Coligny, rather than repreſſed his ardour, had ſhe protected his colony, what a vent had been opened for thoſe humours which then corroded the body-politic; what an American empire might ſhe have poſſeſſed before Virginia had a name! Engliſhmen may perhaps now believe what they have been formerly taught to diſcredit, that their rivals in every laudable purſuit were actually the firſt *occupiers*

of the northern and ſouthern extremities of North-America. Recent events, however, have in ſome meaſure rendered problematical what ſeems formerly to have been ſufficiently evident, whether the miſconduct of that nation was unfortunate or happy for England. The Spaniards nevertheleſs ſoon regained poſſeſſion of Saint Auguſtine.

Elizabeth imitated the wiſe policy of Francis, rather than the bigotted folly of Charles IX. in rouſing the ardour of her people, and directing their commercial enterpriſes to the uſes of the ſtate. She conferred the before-mentioned patents of diſcovery and coloniſation on Gilbert and on Raleigh. And, juſt eighteen years after the final expulſion of the French, in Auguſt, 1685, a colony ſent out by the latter, under the conduct of Lane, a perſon of prudence and ſpirit, landed on the iſle of Roanoak, ſituated on the ſame coaſt, but more northerly than the ſettlements for which France and Spain had contended. During the twelvemonth that the emigrants remained, they diſcovered the rivers to be ſhallow, and the country to be inhabited by men, who "lived by fiſhing and hunting "till harveſt," who were extremely powerful, becauſe, though badly armed, they were numerous and brave.

But the coloniſts ſeem not to have been provided with what was neceſſary to maintain them long in a wilderneſs, becauſe they had been uninſtructed in a project ſo new and uncommon. What was of ſtill greater importance, they ſeem not to have carried with them minds prepared to encounter every difficulty: And being viſited by Drake, ſo renowned in naval annals, as he returned along the coaſt from the deſtruction of St. Auguſtine, they deemed it prudent to deſert "that paradiſe of the "world." The pious among them remarked, that the misfortunes which they had encountered were judgements for the outrages offered to the natives, who merited attention becauſe they were entitled to the rights of men. The French have boaſted, that they alone had found the ſecret of conciliating the affection of the tribes. Yet the inclinations of all governments ſeem to have been equally good, becauſe every one gave inſtructions to treat the aborigines with kindneſs, ſince they wiſhed to civilize them. The emigrants too generally diſobeyed theſe ſalutary commands, becauſe they were placed in a ſingular ſituation: They were

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deemed enemies by the natives, becauſe they were ſtrangers: They enjoyed no common language, by which they could profeſs friendſhip, or communicate their intentions. And the tribes, while they ſeem to have practiſed few of the rules of morality, were, like all untutored men, extremely revengeful, and therefore prompt to reſent ſuppoſed injury, becauſe they felt themſelves brave. A freſh emigration arrived, under the conduct of Greenfield, in the year 1587, in order to ſupport the former: But it encountered ſimilar dangers, and expired in a ſimilar manner.[2] Thus ended the exertions of Raleigh for colonizing Virginia; which proved unſucceſsful, becauſe the enterpriſe had been undertaken without ſufficient information, becauſe the project was new, and the means employed were not equal to the end. His name has been juſtly celebrated, becauſe his talents and adventures added renown to the Engliſh nation; and his fate was pitied, becauſe it was ſevere, perhaps undeſerved.

When Engliſhmen recollected the misfortunes of their countrymen, they wiſhed not to tread in their ſteps, leſt they ſhould meet with the ſame ſucceſs: And they formed, therefore, no projects for planting that part of the Virginian coaſt, which ſtretches ſouthward from the 36th degree of north latitude, till the beginning of the reign of Charles I. At a time when many perſons of conſideration wiſhed to form colonies, becauſe the ſpirit of emigration ran high, Sir Robert Heath, the attorney-general of that prince, obtained a grant, in the year 1630, of that region, by the name of *Carolana*, for which mighty nations had hitherto contended to ſo little purpoſe. But his reſolution failed, or his attention was drawn to other objects; and he ſeems to have made no one effort to execute the powers conferred on him. At a future day his patent was declared to have become void, becauſe the conditions on which it had been granted were never fulfilled.[3] Nothing could be more juſt or wiſe: It is only to be regretted, that the principle of that deciſion has not been more generally extended to ſimilar caſes, and more ſteadily applied.

About the epoch of the Reſtoration, a few adventurers, prompted by their natural diſpoſition, emigrated from Maſſachuſets, and ſettled round Cape Fear. It is a characteriſtic of the Independents to conſider themſelves as bound by no tie to their native land, becauſe they deride the

maxims which knit ſociety together. Their tenets, ſo contrary to the common law of England, neceſſarily lead therefore to diſunion, to diſtractions, to conſtant change: And hence the various emigrations from that colony which have been already noticed. The people who have ſtrongly imbibed their principles are already undone. Thoſe emigrants ſeem to have carried with them, to their new ſettlement, little except their habitual prejudices: They conſidered mere occupancy, with a tranſfer from the natives, without any grant from the king, as a good title to the lands which they occupied: They deemed themſelves entitled to the ſame "civil privileges" as thoſe of the country whence they had emigrated. While we ought to admire the ſeeming liberality of theſe reaſonings, we muſt not approve what in truth leads to univerſal anarchy. That coloniſts from England, carrying with them their ancient rights, ſhould claim former privileges, is no leſs juſt in theory than wiſe in practice; but that emigrants from Maſſachuſets ſhould deem themſelves inveſted with the immunities of this colony, however natural, is not ſo conſiſtent with the general juriſprudence of the ſtate. Mankind, however, placed in ſimilar ſituations will at all times reaſon alike: And ſuch will always be the arguments and pretenſions of the Independents, in whatever clime they inhabit; becauſe, being of the eſſence of their religion, they are inculcated with the milk of the parent. As neither the climate, nor the lands, where they ſettled, were equal in goodneſs to thoſe they had left, as the waters offered not the ſame advantages of fiſhery, as they yet enjoyed none of the benefits of neighbourhood, theſe men for ſome years experienced the complicated miſeries of want. They ſolicited the aid of their countrymen. And the general-court, with an attention and humanity which do it the greateſt honour, ordered an univerſal contribution for their relief.[4] To the ſettlement of ſuch coloniſts may be fairly traced back the various diſtractions which afterwards enſued. For, when the forms of a government and the principles of a people are contradictory to each other, a ſad ſcene of turbulence neceſſarily opens, which muſt cloſe in conſimilarity, by making both coincide, or the ſtate is undone.

The

The country, which had been denominated Florida by the French and Spaniards, by the Engliſh Virginia, at length owed its final ſettlement as much to the rapacity of the courtiers of Charles II. as to the facility of a prince, who wiſhed to reward thoſe, to whom he was ſo much indebted, with a liberality that coſt him little. The pretence, which had been uſed on former occaſions, of a pious zeal for the propagation of the goſpel among a barbarous people, who inhabited an uncultivated county, was ſucceſsfully employed to procure a grant of that immenſe region, lying on the Atlantic Ocean, between the thirty-ſixth degree of north latitude and the river Saint Matheo. On the 24th of March, 1663, this territory was erected into a province, by the name of Carolina, and conferred on Lord Clarendon, Duke of Albemarle, Lord Craven, Lord Berkeley, Lord Aſhley, Sir George Cateret, Sir John Colleton, Sir William Berkeley, as abſolute lords proprietaries for ever: ſaving the ſovereign allegiance due to the crown. They were inveſted with as ample rights and juriſdictions within their American palatinate as any biſhop of Durham enjoyed within his dioceſe. And the preſent charter ſeems to have been copied from that of Maryland, ſo extenſive in its powers and ſo noble in its privileges. Whether this fine province derived its name from Charles IX. of France, or Charles II. of England, has been formally debated by hiſtorians. In ſupport of the former hypotheſis no evidence has been produced; the preſent patent demonſtrates the latter. When the privy-council, not long after, conſidered the preſent condition of Carolina, it decided that all former grants were now void, becauſe they had never been executed: Giving a reaſon for its preſent conduct, which ſhews the extent of its zeal; "that the proprietaries ought "to be favoured."[5]

Animated by this attention, theſe noblemen held their firſt meeting in May, 1663, in order to agree on meaſures for executing the chief purpoſe of their patent. They formed a joint ſtock, by general contribution, for the tranſporting of coloniſts, for the payment of other conſiderable expences: And what was of more real importance, becauſe it more effectually promoted their views, they publiſhed "propoſals to all "that will plant in Carolina," at the deſire of "the New-England "people"

"people" before-mentioned. They declared: That all perſons, ſettling on Charles-river, to the ſouthward of Cape Fear, ſhall have power to fortify its banks, taking the oath of allegiance to the king and ſubmitting to the government of the proprietaries; that the emigrants may preſent to them thirteen perſons, in order that they may appoint a governor and a council of ſix for three years; that an aſſembly, compoſed of the governor, the council, and delegates of the freemen, ſhould be called as ſoon as the circumſtances of the colony would allow, with power to make laws, which ſhould be neither contrary to the laws of England nor of any validity after the publication of the diſſent of the proprietaries; that every one ſhould enjoy the moſt perfect freedom in religion; that, during five years, every freeman ſhould be allowed one hundred acres of land and fifty for every ſervant, paying only one halfpenny an acre; that the ſame freedom from cuſtoms, which had been conferred by the royal charter, ſhould be allowed to every one. Such then were the original conditions on which Carolina was planted.[6] And thus was that colony eſtabliſhed upon the broad foundation of a regular ſyſtem of freedom of every kind; which it was now deemed neceſſary to offer to Engliſhmen, to induce them to encounter all the difficulties of planting a diſtant country, covered with foreſts, inhabited by numerous tribes, to endure the dangers of famine and the damps of the climate. For men will not generally leave their native land, however wretched, unleſs they are urged by the ſtrongeſt incentives.

As early as the year 1609 we have ſeen a ſmall colony ſent out from James-Town, to plant Nanſamond, the moſt ſouthern ſettlement of Virginia, nearly under the thirty-ſixth degree of north latitude. As the aborigines receded from the vicinity of the river, the planters naturally followed their tracks, extending their plantations ſtill farther ſouthweſtward, into the boſom of the wilderneſs. And as coloniſts increaſed, and the moſt deſirable ſituations were occupied, they traverſed the foreſts till they met with the ſtreams, which, inſtead of diſcharging their waters into the capacious Cheſapeake, purſued a ſouth-eaſtern courſe, and flowed into the ocean.

At

At the epoch of the Carolinian patent of 1663, a ſmall plantation had been accordingly, for ſome years, eſtabliſhed within its boundaries, on the north-eaſtern ſhores of the river Chowan, which was now honoured with the name of Albemarle, in compliment to the title of Monk, who had gained ſo much renown by reſtoring a king and ſaving three kingdoms from deſtruction. But, as it was ſo diſtant from the ſeat of Virginian government, the inhabitants yielded little obedience to its power, and had lived for ſome time without any perceivable rule. And nothing could be more wiſe than the appointment of Sir William Berkeley, the governor of Virginia, as general ſuperintendant of the affairs of the county of Albemarle. In September, 1663, he was empowered, by the proprietaries, to nominate a governor and a council of ſix, who were authoriſed to rule that little community according to the powers granted by the royal charter; to confirm former poſſeſſions, and to grant lands to every one, allowing them three years to pay the quit-rents; to make laws, with the conſent of the delegates of the freemen, for the general good, tranſmitting them for the approbation of the proprietaries. And he was requeſted to viſit the colony in perſon, and to employ ſkilful perſons to explore its bays, its rivers, and its ſhores, which were then extremely unknown. From theſe notices we may judge of the then condition of this moſt ancient ſettlement of Carolina, with regard to the freedom of its conſtitution and the mode of acquiring property; the two circumſtances which are the moſt apt to engage the affections of mankind. Berkeley appears to have diſcharged the truſt repoſed in him, during the ſubſequent year, with the greateſt fidelity. He confirmed and granted lands to every one on the conditions before-mentioned; he appointed Drummond, a man of ſufficient prudence and abilities, the firſt governor, with other officers: And he departed; leaving the whole to follow their various purſuits in peace. The coloniſts for ſome time remained in this ſtate of happineſs; becauſe, governing themſelves, they felt not oppreſſion; and, being equally deſtitute of religion and clergy, they were not diſturbed, like the early coloniſts of the North, with religious controverſy. But, as the day approached when the payment of quit-rents was to commence, they became diſſatisfied with the tenures by which they held their lands.

And

And the aſſembly of 1666, being probably the firſt of which any memorial now remains, tranſmitted a petition to the proprietaries; praying, that the people of Albemarle might hold their poſſeſſions on the ſame terms as the Virginians enjoyed theirs. The proprietaries, animated at all times by the ſtrongeſt inclination to do every thing that might promote the ſettlement of their province, that might gratify the wiſhes of the people, agreed to a requeſt which appeared ſo reaſonable; commanding the governor to grant the lands in future on the terms preſcribed by themſelves.[7] Such is the early hiſtory of North-Carolina, which is probably as important and inſtructive as the annals of the moſt renowned ſtates of antiquity, if we deduct from them the agreeable fables with which their eloquent authors have adorned them.

The proprietaries having thus reared, with attentive care, the feebleneſs of Albemarle, turned their chief regard to that finer region which lies more ſoutherly along the coaſt. In Auguſt, 1663, they propoſed to eſtabliſh a new colony, to the ſouthward of Cape Fear, on the river Charles, which was now denominated the county of Clarendon. Several gentlemen of Barbadoes, diſſatisfied with their preſent condition and anxious to become the heads of a leſs conſiderable eſtabliſhment, propoſed to remove thither. But while they ſolicited the grant of a diſtrict, thirty-two miles ſquare, and all the powers of a corporation, they fitted out a veſſel, under the conduct of Hinton, an able navigator, to explore the coaſt from that promontory to the thirty-firſt degree of latitude; becauſe they had been diſcouraged by *the evil reports of the New-England people*. The proprietaries mean-while had given orders to diſpatch a ſhip from Virginia to examine the ſame ſhores; in order to determine what rivers and countries were the moſt proper for habitation. Theſe notices demonſtrate how much that region had been neglected by England from the days of Raleigh and Drake to the preſent, and how much better the French had been inſtructed by the enterpriſes before-mentioned. The reports above alluded to were happily found, by the moſt accurate reſearches, to be entirely groundleſs. And, though the proprietaries refuſed to confer the diſtrict or the corporate powers which had been aſked, they gave the adventurers of Barbadoes every poſſible encouragement, becauſe

becauſe they ſeem to have been perfectly ſatisfied. In January, 1664-5, John Yeamans, a reſpectable planter of this iſland, was appointed commander in chief of Clarendon county, ſtretching from Cape Fear to the river Saint Matheo, and he was at the ſame time created a baronet, in order to give weight to his ſtation, to add ſplendour to a colony which as yet had but little in itſelf. The ſame powers were now conferred and the ſame conſtitution was eſtabliſhed as thoſe which had made Albemarle happy. He was ordered to grant lands to every one, according to the conditions agreed on with the adventurers, reſerving one halfpenny ſterling for every acre, payable in March, 1670: He was directed "to "make every thing eaſy to the people of New-England, from which the "greateſt emigrations are expected, as the ſouthern colonies are already "drained." There was an order at the ſame time made, that the commiſſion of Yeamans ſhould not prevent the appointment of a new governor for the projected ſettlement to the ſouthward of Cape Romain, which ſoon after acquired the name of Carteret. Thus eſtabliſhing for Carolina a variety of ſeparate and independent colonies, each of which had its own government, its own aſſembly, its own cuſtoms and laws: A policy, which occaſioned probably the long continued feebleneſs and diſtractions of that province, the proprietaries found leiſure to regret. The reigning monarch, deſirous to lend his aid to the laudable exertions of his courtiers, gave them twelve pieces of ordnance, which were now ſent to Charles-river with a conſiderable quantity of warlike ſtores.[8]

Having thus acquired the moſt minute information of the whole coaſt, having diſcovered on both extremes of their province tracts of land that would form advantageous additions, the proprietaries eaſily obtained, from the facility and favour of their ſovereign, a ſecond charter, in June, 1665.[9] It recited and confirmed the former. It granted, to the ſame patentees, that province ſituated within the king's dominions in America, extending north-eaſtward to Carahtuke-inlet, thence in a ſtraight line to Wyonoke, which lies under 36 deg. and 30 min. north latitude; ſouth-weſtward to the 29th degree; and from the Ocean to the South Seas. It conferred on them all the rights, juriſdictions, and royalties, which the biſhop of Durham ever poſſeſſed. This region was to

be holden of the manor of Eaſt-Greenwich, paying a rent of twenty marks and one fourth of the gold and ſilver that ſhould be found. All perſons, except thoſe who ſhould be expreſſly forbidden, were allowed to tranſport themſelves to Carolina; and they and their children were declared to be denizens of England, who ſhould be always conſidered as the ſame people, and poſſeſs the ſame privileges as thoſe dwelling within the realm. They were empowered to trade in all commodities which were not prohibited by the ſtatutes of England: They were authoriſed to lade the productions of the province, and to bring them into England, Scotland, or Ireland; paying ſuch duties as other ſubjects: And they were exempted, for ſeven years, from the payment of any cuſtoms on the importation, into any of the dominions of the crown, of wines and other enumerated products of the colony. The proprietaries were enabled to make laws for the province, with the conſent of the freemen or their delegates; ſo that they ſhould be reaſonable, and as near as might be to thoſe of England. They were empowered to erect ports for the convenience of commerce; and there were granted to them ſuch cuſtoms as ſhould be impoſed by the aſſembly. They were allowed to grant titles of honour by the creation of a nobility. Carolina was declared independent of any other province, but ſubject immediately to the crown of England; and the inhabitants were never to be compelled to anſwer in other dominions of the crown, except only within the realm. The proprietaries were authoriſed to grant indulgences to thoſe who could not conform to the church of England, who ſhould not be moleſted for their religion while they diſturbed not the peace of the province. Such then is the ſubſtance of the laſt of the Carolinian charters; which conferred on the noble grantees a moſt extenſive territory and royal rights; on the people, Engliſh liberties; which ſaved the power of parliament with regard to regulation and taxation. But no one prerogative of the crown was reſerved, except only the ſovereign dominion. Lord Clarendon, the chancellor, was not long after impeached; becauſe, among other offences, *he had introduced arbitrary government into the plantations.*[10] Yet they who attentively peruſe the charters, granted to Connecticut, Rhode-Iſland, and Carolina, while he held the ſeals, will probably

bably be of opinion that his crime conſiſted in ſacrificing the legal powers of the crown, and the national rights, at the ſhrine of his colonial prepoſſeſſions. Againſt the charges of party that unfortunate ſtateſman eaſily defended himſelf, becauſe they were unjuſt; to this he would have probably found it more difficult to anſwer.

Though the proprietaries, encouraged by this freſh inſtance of the royal favour, exerted themſelves for ſeveral years to procure adventurers from Scotland, from Ireland, the Weſt-Indies, and the northern colonies, Carolina, like almoſt all the other plantations, increaſed ſlowly in population and in power. Owing partly to the climate, which, though celebrated during thoſe times, is known to be unhealthful; but more to the diſperſion of a few ſettlers over the face of an extenſive deſert, it languiſhed during a conſiderable length of years; becauſe ſimilar obſtructions occurred here to ſtop its growth. Notwithſtanding the greatneſs of their power, and the expenſiveneſs of their exertions, the noble projectors were taught, by experience, that nature compels all to obey. The emigrants of Barbadoes, conducted by Sir John Yeamans, at length landed, during the autumn of 1665, on the ſouthern bank of the river of Cape Fear. Like that of all other men who have undertaken the arduous taſk of ſubduing a wilderneſs, their firſt labour was applied to the erection of habitations, and to the procurement of food. Their leader ruled them with the affection of a father, rather than with the authority of the governor, according to the inſtructions that had been given him in charge. At the ſame time that he cultivated the good-will of the aborigines, he only obeyed the humane orders he was honoured with; which inſured a ſeven years peace, that was at length diſturbed by the intereſtedneſs of individuals; and the people, as uſual, ſuffered for the follies or crimes of their rulers. While the planters opened the foreſt, to make room for the operations of tillage, they neceſſarily prepared timber for the uſes of the cooper and builder; which they tranſmitted to the iſland whence they had emigrated, as the firſt object of a feeble commerce, that kindled the ſpark of induſtry which ſoon gave animation to the whole." As the emigrants had no other grievance to complain of than what was incident to the ſituation which they had choſen for themſelves,

ſelves, their early ſtory offers no other leſſon to mankind, than by putting future adventurers in conſtant remembrance of the ſufferings of others, to convince them of the neceſſity and the uſe of ſteeling their minds, for the approach of difficulties, for the conqueſt of danger.

Being gratified in their firſt requeſt, the inhabitants of Albemarle purſued their original employments in peace, though not with alacrity, becauſe they had emigrated from a colony where the commercial ſpirit did not exiſt. Yet, like their neighbours of Virginia, they continued to cultivate tobacco and Indian corn, which promoted an inconſiderable traffic with the traders of New-England, who ſeem alone to have then frequented their ſhallow rivers, and to have ſupplied their little wants. In October, 1667, Samuel Stevens, a man whoſe abilities and virtues were thought equal to the truſt, was appointed governor of Albemarle, in the room of Drummond. And now was given to that colony ſuch a conſtitution as muſt have rendered it completely happy, had it been faithfully ſupported. He was commanded to act altogether by the advice of a council of twelve; the one half of which he was empowered to appoint; the other ſix the aſſembly was authoriſed to chooſe. And here ſeems to be a ſufficient remedy for that defect which wiſe men have diſcovered in the eſtabliſhment of that body, in the colonial conſtitutions, which forms equally the ſenatorial branch of the legiſlature, the privy-council of the ſupreme magiſtrate, and the court of appeals. The aſſembly was compoſed of the governor, of the council, of twelve delegates choſen annually by the freeholders. The legiſlature was not only inveſted with the power to make laws, but with a large portion of the executive authority; with the right of convening and adjourning itſelf, of appointing officers, of preſenting to churches. Various regulations provided for the ſecurity of property: No taxes could be impoſed without the conſent of the aſſembly: Their lands were confirmed and granted to be now holden by the free tenure of ſoccage, which always carries with it a certain rent and independence. Perfect freedom in religion was offered to a people who ſeem hitherto to have been little attached to any: And all men were declared to be entitled to equal privileges, upon taking the oath of allegiance to the king, and of fidelity to the proprietaries. This admirable

ſyſtem

ſyſtem the inhabitants received with a ſatisfaction in proportion to the importance of it. But it was not till the autumn of 1669 that an aſſembly thus conſtituted was convened, for the making of laws for men, who being yet few in number, ſeem to have been governed chiefly by the cuſtoms they had brought with them from their ancient eſtabliſhment. Owing to peculiar motives it has always been an univerſal principle of colonial policy *to obſtruct the recovery of debts*: And, as the legiſlature remarked, that ſufficient encouragement had not been yet given to the peopling of Albemarle, it was now enacted; that none ſhall be ſued, during five years, for any cauſe of action ariſing out of the country; that none ſhall accept a power of attorney, to receive debts contracted abroad. Hence this colony was long conſidered as the refuge of the criminal and the aſylum of the fugitive debtor. But a more natural mode of promoting population was at the ſame time eſtabliſhed, by *an act concerning marriage*: It declared; that, as people might wiſh to marry, and there being yet no miniſters, in order that none might be hindered from ſo neceſſary a work for the preſervation of mankind, any two perſons, carrying before the governor and council a few of their neighbours, and declaring their mutual aſſent, ſhall be deemed huſband and wife. From this remarkable law we may judge of the then ſtate of religion and of morals. And here we ſee a prodigious contraſt between the Southern and Northern coloniſts. All the emigrations of New-England were conducted by eccleſiaſtics, who long directed, with almoſt equal authority, in temporal as in ſpiritual affairs. During almoſt twenty years we can trace nothing of clergymen in the hiſtory or laws of Carolina: And it was not till the diſſenters had emigrated thither in conſiderable numbers, and began to contend for equality, perhaps for pre-eminence, that we hear of religious controverſy, or indeed any thing of religion. Other regulations, which were equally neceſſary, were at that time enacted. *New comers* were exempted from taxes for one year. Engroſſing was prohibited. The peace of the country was inſured, by prohibiting *ſtrangers* from trading with the Indians. Every one was reſtrained from "tranſ-" ferring his lands for two years." A duty of thirty pounds of tobacco on every law-ſuit was impoſed, for paying the expences of the governor and

and council during the ſitting of aſſemblies, *as no courſe had yet been taken for defraying their charges.*" And theſe laws, which demonſtrate the weakneſs, and illuſtrate the early policy of that inconſiderable ſettlement, were ratified by the proprietaries in January, 1670. As it received little augmentation to its numbers from abroad, the coloniſts increaſed but ſlowly, and they only then began to plant the ſouthern banks of the river Albemarle; which ſhews that the extent of its frontier was equal to the paucity of its people.[12]

Mean-while, the proprietaries, diſſatisfied with every ſyſtem which they had hitherto created for their province, in July, 1669, ſigned a body of *fundamental conſtitutions*, that had been compiled by the celebrated Locke: Giving as a reaſon, what ſhews how much they had repented of their former conduct; "that we may eſtabliſh a government agreeable to the "monarchy of which Carolina is a part, that we may avoid making too "numerous a democracy." By this edict[13] a palatine was to be choſen from among the proprietaries for life, who was empowered to act as preſident of the palatine-court, compoſed of the whole, which was intruſted with the execution of the powers of the charter. A body of hereditary nobility was created, and denominated landgraves and caciques, becauſe they were to be unlike thoſe of England in name; the former to be inveſted with four baronies, conſiſting each of ſix thouſand acres; the latter to have two, containing one half of that quantity: And theſe eſtates were to deſcend with the dignities inſeparably. The provincial legiſlature, dignified with the name of parliament, was to be biennial, and to conſiſt of the proprietaries or of the deputy of each, which each might appoint; of the nobility; of the repreſentatives of the freeholders of every diſtrict: And, like the ancient Scottiſh parliament, all were to meet in one apartment, and every member to enjoy an equal vote: But no buſineſs was to be propoſed till it had been debated in the grand council, whoſe duty it was, like the lords of articles of the Scottiſh conſtitution, to prepare bills for its conſideration. At the end of every century the laws enacted by it were to become void without the formality of repeal, ſimilar alſo to a principle of the juriſprudence of Scotland. A grand council, compoſed of the governor, the nobility, and

and deputies of proprietors, was eſtabliſhed, and inveſted with the executive power of the province. Various judicatories, from that of the hundred to the court of the chief juſtice, were erected. As an encouragement to emigration, fifty acres of land were offered to every coloniſt, paying for ever a quit-rent of a penny an acre. The church of England alone was to be allowed a public maintenance by parliament; but every congregation might tax its own members for the ſupport of its own miniſters: And to every one was allowed perfect freedom in religion. Yet the moſt degrading ſlavery was introduced, by inveſting in every freeman the property of his negro. And theſe conſtitutions, conſiſting of one hundred and twenty articles, and containing an infinite variety of perplexing regulations, were declared to be the ſacred and unalterable rule of government in Carolina for ever. They offer few *practical maxims* which are alone uſeful; they were never altogether adopted; and they merit therefore no farther diſcuſſion.

But the wiſe men, who were chiefly engaged in that famous act of legiſlation, ſeem not to have reflected, during their ardour, that the provincials had ſettled on conditions which it was no longer in their power to abrogate; that, in the forms of government which had been actually eſtabliſhed, the people had acquired an intereſt which could not be taken away without their conſent; that, while they gave a ſuppoſed freedom to ſome, they reduced others, who were equally entitled to the rights of nature, to bondage. Of theſe conſtitutions it has been ſaid, that they were intended to form a miniature of the ancient Saxon government in England: But the Carolinians ſhould have been placed in a ſimilar ſituation as the Saxons, before their ſyſtem had been eſtabliſhed as the unalterable rule. For laws are made for men, who ſeldom adopt the projects of others, and not for a deſert, which is yet to be filled with a people ſuitable to the laws: And the hiſtory alone of Carolina and of Georgia demonſtrates this important truth, which the proprietaries ſeem not to have foreſeen. Nothing can ſhew more clearly the fallibility of the human underſtanding than the ſingular fate of theſe conſtitutions. Diſcovered inſtantly to be wholly inapplicable to the circumſtances of an inconſiderable colony, and in a variety of caſes to be altogether impracticable,

they were immediately changed. The identity of them was debated by thoſe to whom they were offered as a rule of conduct, becauſe they had not been conſulted in the formation of them. They gave riſe to the greateſt diſſentions, which long diſtracted the province, which engendered civil diſcord. And, after a little period of years, the whole, found inconvenient and even dangerous, were laid aſide, and a much ſimpler form eſtabliſhed. Nor is this any imputation of the admirable talents of the compiler of theſe famous conſtitutions, or of the wiſdom of thoſe who approved them. For the art of legiſlation, as it is the nobleſt, is alſo the moſt difficult of any. The juriſprudence of every community, receiving additional improvement from every new ſituation at which it arrives, during its progreſs, can only acquire that ſtate of perfection which ſeems to give ſatisfaction to all from the accumulated wiſdom and experience of ages. And men of diſcernment have remarked; that the illuſtrious legiſlators, the Solons, the Numas, the Alfreds, only collected thoſe cuſtoms which they found already adopted by their tribes, which they afterwards diſtributed with illuſtrations. If the various forms of New-England were altogether democratic, theſe conſtitutions erred in the other extreme, by eſtabliſhing a rule of the nobles: Both were defective, becauſe both wanted the excellent balance of the Engliſh conſtitution.

The proprietaries having thus eſtabliſhed a conſtitution, which they preſumed the Carolinians would receive with ſatisfaction, becauſe it pleaſed themſelves; which they deemed immortal, becauſe it was declared to be unalterable; proceeded immediately to execute what depended on them. By chooſing the famous duke of Albemarle their palatine, he was placed at their head, as the repreſentative of the king, and in ſome meaſure inveſted with the ſupreme direction: But he did not long ſurvive this additional dignity; and, becauſe Lord Berkeley was the next oldeſt of the proprietors, he ſucceeded him in the year 1670, in conformity to the conſtitutions. The other proprietaries were at the ſame time appointed to other offices of high name and ſound, but of no real importance or uſe. As a reward of his ſervices, John Locke was not long after created a landgrave; who, like the other Carolinian nobles, had been conſigned

to

to oblivion, but for thoſe writings that have enlightened the world while they have immortalized himſelf. Leaving Albemarle to its own exertions, the proprietaries turned their whole attention to the ſettlement of the ſouthern parts of the province. With this view a conſiderable number of emigrants was ſent out in January, 1670, in order to form a colony at Port-royal, under the conduct of William Sayle, a man of experience, who had been appointed governor of that part of the coaſt lying ſouth-weſtward of Cape Carteret. He was accompanied by Joſeph Weſt, who was now entruſted with the commercial affairs of the proprietaries, who, for upwards of twenty years, bore the chief ſway in Carolina. Theſe noblemen for ſome time were the only merchants, in order to ſupply the wants of the coloniſts rather than to acquire profit. And they now employed veſſels to carry on a circuitous traffic, for the purpoſe of procuring coloniſts, cattle, proviſions, from Virginia, Bermudas, and Barbadoes; of carrying off the inconſiderable products of the land. Before the year 1679 they had expended eighteen thouſand pounds on a project which had then only yielded them vexation and poverty. [14]

The emigrants, after touching at Ireland and Barbadoes, arrived ſafe at the place of their deſtination. And now the defects of their conſtitutions appeared to every one. A colony intended to be ruled in a great meaſure by nobles was found to have neither landgraves nor caciques: In the ſame manner, the people to be ruled were extremely few. And at the ſame time that it was deemed impracticable "to execute the grand "model, it was determined to come as nigh to it as poſſible." Writs were therefore immediately iſſued, requiring the freeholders to elect five perſons, who, with five others choſen by the proprietaries, were to form the grand council, without whoſe aſſent the governor could perform no governmental act. Of theſe, and twenty delegates choſen by the ſame electors, the parliament was compoſed, which was inveſted with legiſlative power. As encouragements to ſettle at Port-royal, one hundred and fifty acres of land were given to every emigrant at an eaſy quit-rent; clothes and proviſions were diſtributed, from the ſtore of the proprietaries, to thoſe who could not provide for themſelves. And, in order to

ſecure the good-will of the neighbouring tribes, and conſequently the ſafety of the ſettlement, conſiderable preſents were prudently given to the *Indian caciques*, who bore conſiderable ſway. Scarcely had Sayle performed what was given him in charge, when, his conſtitution yielding to the damps of the climate, he died: Leaving the coloniſts to the common lot of thoſe who engage in ſuch enterpriſes.[15]

The command of Sir John Yeamans, who had hitherto ruled the plantation around Cape Fear with a prudence which precluded complaint, was extended, in Auguſt, 1671, over that which lay ſouth-weſtward of Cape-Carteret: And the authority given him was exactly the ſame as that of his predeceſſor. The ſhores, the ſtreams, and the country, being now perfectly known, becauſe they had been accurately ſurveyed, the planters, from Clarendon on the north, from Port-Royal on the ſouth, reſorted to the banks of Aſhley-river, "for the convenience of "paſture and tillage." And here, "on the firſt high-land," was laid, during the ſame year, the foundation of *Old Charles-Town*, which became for ſome years the capital of the ſouthern ſettlements. The proprietaries, with their former ſpirit, promulgated "*temporary laws*, till, by a "ſufficient number of inhabitants, government could be adminiſtered "according to the fundamental conſtitutions." One of theſe rules humanity dictated, and policy approved: It commanded, that every one ſhall cultivate the friendſhip of their neighbours the Indians, ſhall make them ſatisfaction for wrongs; that none of them, on any pretence, ſhall be enſlaved or ſent out of the country: And the whole concluded with this general direction, "that ſo much of the fundamental conſtitutions "as can be exerted ſhall be the rule of proceeding." But the temporary laws were not of long duration, becauſe they were derided by a people without whoſe conſent they had been eſtabliſhed, and they deſerve not to be now remembered. Far from being able to raiſe commodities to exchange for the various neceſſaries which the coloniſts wanted from abroad, they were for years only capable to procure food. During this period of their weakneſs, the proprietaries ſupplied them abundantly; but they were either unwilling or unable to repay them; and, before the end of the year 1673, a debt of ſeveral thouſand pounds had been incurred.

Yet

Yet they now ſolicited freſh ſupplies, though they ſhewed not how the late or future expences were ever to be reimburſed. And they complained of neglect, and inſinuated reproach, becauſe their creditors "would no "longer continue to feed and to clothe them." This conduct, which has been at all times too common in the world, rather than the Dutch war, put an end to a correſpondence which was ſo uſeful, ſo neceſſary, to them, becauſe the proprietaries thought it time to give over ſuch a charge, ſince the country was not worth having at ſo dear a rate. Willing, however, to encourage the induſtrious, particularly the emigrants from England, New-York, and the northern colonies, who were real friends to the ſettlement, they ſent another ſupply, and promiſed an annual one; but they warned the planters to conſider how they were to be repaid, ſince they were determined "to make no more deſperate debts." They ſoon after tranſmitted them what was of more real importance, "vines and other uſeful plants, and men ſkilled in the management of "them." The whole conduct of Sir John Yeamans, as too frequently happens, ſeems to have been changed by his promotion to more extenſive command. Inſtead of dedicating his chief attention to promote the happineſs of the people by a ſalutary adminiſtration, he acted as the only trader of that little community, "buying of the poor planters their "proviſions at low prices, and ſhipping them off to Barbadoes." His improper management was ſuppoſed to have reduced the colony to "no "higher pitch than to be ſubſervient to that iſland in proviſions and "timber:" And his commiſſion was revoked in May, 1674. At the ſame time that the proprietaries refuſed to ſend the Carolinians "a ſtock "of cattle," becauſe "they wiſhed not to encourage graziers, but "planters," they ſtrongly recommended the cultivation of tobacco, till more beneficial ſtaples could be introduced; ſince, where there can be no barter, no traffic can exiſt.'[6] Mutual jealouſy and diſcontent ſeem to have then commenced between the rulers and the people, which embittered the cup of future intercourſe. Yet it is from this epoch that we may date the proſperity of Carolina, becauſe ſhe was then taught a leſſon which it is of the greateſt importance for every individual and every ſtate to know; "that ſhe muſt altogether depend on her own exertions."

In the mean time, the ſame inſtructions which were given to Sayle, for the government of the ſouthern colony, were tranſmitted, in the beginning of the year 1670, to Stevens, the governor of Albemarle, becauſe they were here equally neceſſary: But a ſyſtem which eſtabliſhed a change ſo unfavourable to the intereſts of freedom, without the conſent of the people, was received with diſſatisfaction, perhaps deriſion. And there were not wanting men who promoted the public diſcontent; becauſe, like thoſe to be met with in every country, they found no pleaſure in repoſe. It was now inſinuated, though there ſeems to have been no foundation for it, that the proprietaries intended to diſmember their provinces, and to give, to Sir William Berkeley, Albemarle, as his portion of the whole. The aſſembly of October, 1675, feeling for the independence of the colony, remonſtrated to the proprietaries againſt a meaſure ſo injurious to individuals, and ſo degrading to the country. A favourable anſwer was given in the ſubſequent year: Thoſe noblemen aſſuring the coloniſts, that they would always maintain the province entire, in order that they might preſerve their Engliſh rights; that every advantage might be derived from the vicinity of Virginia: Yet they confeſſed that they had been wanting in attention to the people of Albemarle, becauſe they looked upon them as men who regarded the intereſts of others, ſince they had neither planted the banks of the rivers Pimlico and Neuſe, nor diſcovered "a way by land" to the ſettlement of Aſhley. During the diſcontents of thoſe times, Miller, a perſon of ſome conſideration, being accuſed of ſpeaking ſeditious words, was ſent to James-Town for trial, becauſe the power of Sir William Berkeley was then dreaded. But the rulers of Albemarle ſeem not to have reflected, during their ill-grounded fears, that they deprived him equally of his chartered privileges and legal rights. He was acquitted. Yet, at a future day, the proprietaries diſapproved of a conduct ſo deſtructive of their juriſdiction, which in all countries is defended with ſo much ardour, becauſe its preſervation inviolate is ſo flattering to the pride of men. Amid diſtractions which ſhew a total debility of government, proceeding from the frequency of the late changes, from the eſtabliſhment of forms contrary to the inclinations of the people, Albemarle was deprived of a governor, by the death of Stevens,

in

in the beginning of the year 1674. Agreeably to a prudent inſtruction for that purpoſe, the aſſembly choſe Cartwright in his room, "till or-"ders ſhould come from England." Yet diſguſted, probably, with a ſituation wherein he could acquire neither much profit nor reputation, he returned to England in the beginning of the year 1676; leaving "the "adminiſtration in ill order and worſe hands."[17]

When the proprietaries reflected how much their former inſtructions had been neglected, and their deſigns oppoſed, by thoſe who were intruſted with the execution of both; how much the trade of New-England thither had been promoted contrary to the former, and the ſettlement of the ſouthern bank of the Albemarle had been diſcouraged notwithſtanding the latter, they reſolved to appoint ſuch a governor as ſhould execute both. In November, 1676, they named therefore Eaſtchurch, whoſe addreſs and abilities had raiſed him to the dignity of ſpeaker of the aſſembly, who had lately arrived in England, to repreſent the ſituation of affairs: And his inſtructions were framed ſo as to remedy the late, and to prevent future, diſorders. Miller, who now ſolicited reparation for his wrongs, was at the ſame time appointed ſecretary and Lord Shafteſbury's deputy; by the commiſſioners of the cuſtoms he was conſtituted the firſt collector of the parliamentary revenue in that colony. They departed in the beginning of the ſubſequent year, in order to take upon them theſe important offices. But Eaſtchurch, being detained in the Weſt-Indies by an agreeable engagement, thought it prudent to detach the companion of his voyage to govern the colony as preſident till his arrival.[18]

As chief magiſtrate and collector of the royal cuſtoms, Miller was received in July, 1677, with a treacherous facility which did not forebode a peaceful adminiſtration. He found the colony to conſiſt of a few inconſiderable plantations, diſperſed over the north-eaſtern bank of the Albemarle, and divided into four diſtricts. The coloniſts were far from numerous, becauſe the *tithables*, conſiſting of all the *working hands*, from ſixteen to ſixty years of age, one-third of which was compoſed of *Indians*, *negroes*, and *women*, amounted only to fourteen hundred: And, excluſive of the cattle and the Indian corn, eight hundred thouſand pounds of

of tobacco were the annual productions of their labour. Theſe formed the baſis of an inconſiderable commerce, which was almoſt entirely carried on by the people of New-England, who ſupplied their little wants, who ſent their commodities all over Europe, who, in a great meaſure, governed the colony and directed the purſuits of the planter to their own advantage.'[19] Thus that country acquired, by the addreſs of its traders, that ſtaple which it had been the policy of the acts of navigation to eſtabliſh in England. And though the ſituation of Virginia ought to have commanded the whole of a traffic of which ſhe now only enjoyed a part, yet ſo little was ſhe governed by commercial motives, that two years after ſhe prohibited[20] " the importation of tobacco from Carolina; as it had " been found very prejudicial." Yet let us not think meanly of the population, of the products, or the wealth, of Albemarle, ſince, with regard to all theſe, ſhe was then ſuperior to her neighbour on Aſhley. Uninſtructed in the precepts of religion, the coloniſts were ignorant; uninformed of the affairs of the world, they were extremely credulous: And they formed therefore fine inſtruments to perform the work of thoſe who wiſhed to profit by them. In conformity to his inſtructions, Miller began the work of reformation, which, in all countries, muſt be conducted by the hand of prudence; which has ſhaken the thrones of princes, though ſupported by talents and power, that this man did not poſſeſs. He eaſily obliged Bird, who had been appointed collector by the aſſembly, to refund a conſiderable ſum which he had collected under the authority of the act of parliament before-mentioned:[21] He endeavoured to promote a more direct trade with England and the other colonies, in order to deſtroy the monopoly enjoyed by the people of New-England; who, ſaid the proprietaries, cannot be friends to the proſperity and intereſt of Carolina, which will certainly in time render them inconſiderable. But, as preſident, " he did many extravagant things, " whereby, as we are aſſured, he loſt the affections of the people." Yet the regular diſcharge of his duty, when obliged to perform ſuch inſtructions, tended neceſſarily to render him obnoxious. The uſual arts of the ſeditious were moreover employed to diſſeminate diſcontent and raiſe diſaffection.[21] And the traders of New-England, conſcious of the orders

ders that threatened the loſs of an advantageous commerce, watered the ſeeds of diſorder, which they foreſaw would yield them an abundant harveſt.[22] The moment an armed veſſel arrived, which was conducted by Gillam, a name then famous in Albemarle, an inſurrection broke out in December, 1677. The inſurgents were chiefly conducted by Culpeper, who had, in 1671, been appointed ſurveyor-general of Carolina, who had raiſed commotions on Aſhley-river, who was now greatly liſtened to, becauſe he was deemed ſo experienced in ſuch enterpriſes. As there was no power to reſiſt them, they eaſily acquired undiſputed poſſeſſion of the country. They impriſoned the preſident, who was the chief object of their indignation, and ſeven proprietary deputies; they ſeized the royal revenue, amounting to three thouſand pounds, which they appropriated for ſupporting the revolt; they eſtabliſhed courts of juſtice; they appointed officers; they called a parliament: And they, for years, exerciſed all the authority of an independent ſtate.[23] As there had been no example of a revolt, which was not accompanied by a manifeſto, ſo now the inhabitants of *Paſquetanke* addreſſed *a remonſtrance to the reſt of the people of Albemarle*;[24] in order to juſtify a conduct which might have appeared unprovoked; to induce the planters of the three other diſtricts to favour their views and to lend them their aid. It complained of the various oppreſſions of Miller, and aſſigned, as a principal reaſon why they had ſeized the records and impriſoned the preſident, "that thereby the "country may have a free parliament, to repreſent their grievances to "the proprietaries." Though this writing is not remarkable either for elegance of diction or vigour of ſentiment, yet it was adapted to the underſtandings of all the parties, and anſwered its end: It is to be lamented, that ſuch publications ſeldom contain the real motives of the chief actors on ſuch occaſions. Of this inſurrection contemporary men of diſcernment remarked: That it was owing to no ſudden provocation, but was the effect of deliberate contrivance, in order that the conductors of it, and ſome other men of New-England, might get the trade of this country into their own hands, might defraud the king of his cuſtoms, and buy the goods of the inhabitants at their own rates. And thus the people are made the conſtant bubbles of their own credulity and of others crimes:

crimes: We may deplore their miſeries, though it ſeems to little purpoſe to lament what cannot poſſibly be in future prevented!

When Eaſtchurch at length arrived, to whoſe commiſſion or conduct there could be no objection, the inſurgents derided his authority and denied him obedience. He was conſtrained to apply to the governor of Virginia for aid: But he died of vexation before a ſufficient number of troops could be collected to anſwer his purpoſe. Yet, ſtill apprehenſive of an invaſion from this province, of the puniſhment that would probably be inflicted, his opponents, at the end of two years ſucceſsful revolt, diſpatched Culpeper and Holden to England, to promiſe ſubmiſſion to the proprietaries, but to inſiſt on the puniſhment of Miller. And the late preſident, and other officers, who had languiſhed mean-while in priſon, having found means to eſcape, appeared in England about the ſame time, and filled the court and the nation with complaints of their own ſufferings, with accuſations againſt their perſecutors.[25] Men, who regarded neither, ſaw, in the continuance of the preſent revolt, the degradation of the proprietary government, of the authority of England; and foretold, that, when the preſent actors no longer gave animation to the ſcene, the colony and the ſtate would equally feel and regret the evil of bad example, which muſt neceſſarily reſult from ſucceſsful inſurrection.

When Culpeper had executed his commiſſion, and was about to return, he was impeached, by the commiſſioners of the cuſtoms, of the crimes of acting as collector without their authority, of embezzling the king's revenue. He was ſeized on-board a veſſel in the Downs, by virtue of a warrant from the privy-council. It was in vain for him to acknowledge the facts and to beg for mercy; or, were this refuſed, to requeſt that he might be ſent to Carolina for trial, where the offences were ſuppoſed to have been committed: His powerful accuſers inſiſted that no favour might be ſhewn him, unleſs he refunded the duties which he had wrongfully ſeized.[26] And, in Trinity-term, 1680, he was tried in the court of King's-Bench, on an indictment of high-treaſon committed without the realm. Though five witneſſes fully proved thoſe circumſtances which conſtituted the crime, yet the famous Shafteſbury, who was then in the zenith of his popularity, appearing on his behalf, and repreſenting,

repreſenting, contrary to the moſt undoubted facts, "that there had ne-"ver been any regular government in Albemarle; that its diſorders were "only feuds between the planters, which could only amount to a riot;" Culpeper was acquitted:[27] The judges declaring, that to take up arms againſt the proprietary government was treaſon againſt the king.

Though hiſtorians concur in repreſenting miſtakingly, that Culpeper was ſent from Carolina, and tried in England for high-treaſon committed within that colony, yet none of them deny, or even doubt, the legality of the trial.[28] That was reſerved for modern times. And Sir Peyton Ventris, the reporter of his caſe, remarks, with approbation, "that, by the ſtatute of Henry VIII. foreign treaſons may be either "tried by a ſpecial commiſſion, or in the king's-bench by a jury of the "county where that court ſits."[29] It ſeems to have been anciently a matter of uncertainty in what manner treaſons committed without the kingdom were to be inquired of; "they wanted trial at common law, "ſays Sir Edward Coke,[30] and therefore to eſtabliſh certainty therein, "the above-mentioned law was made." How much the vigorous reign of Elizabeth was diſturbed by various rebellions in Ireland is known to every one: And ſeveral offenders, againſt the duty of their allegiance, were puniſhed within the realm, agreeably to a reſolution of the judges, "though Ireland had the ſame laws for treaſon that England hath, and "ſome more."[31] A ſimilar practice continued in the two ſubſequent reigns, becauſe ſimilar crimes occurred. And though a peer of Ireland inſiſted, that, were he tried in England, he would be deprived of the beneficial trial by his peers, he was yet convicted by a jury of Middleſex.[32] No propoſition of law, therefore, could be better eſtabliſhed or known, at the epoch of American coloniſation, than that foreign treaſons might be tried within the realm: And none could be more applicable to the condition of ſubjects reſiding within a diſtant territory of the crown. It was accordingly declared, we have ſeen, to be a fundamental principle in the Virginian conſtitution; "that every offender againſt the duty of his "allegiance, ſhall be ſent to England, there to receive condign pu-"niſhment." The ſame rule was expreſſly eſtabliſhed and enforced by the Carolinian charter of 1665. The practice ſeems to have been com-

mon and univerſal during the reign of Charles II. to ſend coloniſts to England, charged with high-treaſon.[33] It was continued by William at the Revolution, and ſtrengthened by Anne. But Culpeper is the firſt coloniſt who appears to have been regularly tried in the court of king's-bench by virtue of the ſtatute before-mentioned. And the learned of former times remarked: That long uſage, uniformity in principle, the approbation of ages, are the beſt evidences of a conſtitutional right.[34]

To put an end to an uſurpation that had ſo long oppreſſed the people and ſet at naught the power of the proprietaries, two propoſals were ſubmitted to them; either, by a vigorous exertion of an inconſiderable armament, to ſubdue the inſurgents by force; or to accept of their proffered ſubmiſſion on the terms propoſed by themſelves. Agreeably to the wonted practice of the weak, the proprietaries temporized for ſome time; now ſhewing a diſpoſition, while they were incited by their reſentments, to exhibit an example to poſterity, by puniſhing the moſt guilty; at other times, blaming the conduct of their officers, and juſtifying the actions of their opponents: But, with the acquittal of Culpeper, they determined to adopt the laſt, which at once diſplayed their own imbecility, and offered up, at the ſhrine of miſtaken policy, thoſe friends who had riſqued every thing in defence of their rights. And they reſolved to govern, in future, according to that portion of obedience which the inſurgents ſhould be diſpoſed to yield them.[35] The wiſe exclaimed, in the language of prediction; "that a government, actuated by ſuch "principles, cannot poſſibly be of long continuance."

In proſecution of this determination, the proprietaries eſtabliſhed a temporary adminiſtration in the beginning of the year 1680, at the head of which was placed Harvey as preſident: Reſolving to ſend thither Seth Sothel, who had lately purchaſed Lord Clarendon's ſhare of the province, that, by his authority, he might reduce the late diſtractions to order. Yet they were diſappointed. Little regard was paid to the rule of Harvey, becauſe men yield unwilling obedience to a government which they know to be of ſhort duration: And Sothel was taken by the Algerines on his voyage thither. Henry Wilkinſon, a perſon from whoſe prudence much was expected, was appointed governor, in February, 1681, of that part

of

of Carolina ſtretching from Virginia to the river Pemlico, and five miles beyond it. Means were now employed to heal former diſorders. An act of oblivion was paſſed, but with an exception with regard to "the "duties due to the king and to the eſtates of his collector." To the governor and council the proprietaries remonſtrated: "We hope your own intereſt, as well as our injunction, will induce you to uſe your utmoſt endeavours to ſettle order amongſt yourſelves, without which you can never expect an increaſe of ſtrength or trade; and theſe conſiderations ought to prevail ſo far, that we ſhall not be conſtrained to uſe force to reduce the ſeditious to reaſon; ſince it is the good of the inhabitants we moſt deſire, and not the taking away of any man's life and eſtate."[35] But this ſenſible repreſentation was attended with little effect, becauſe former cauſes continued. Strangers to that moderation which the lenity and good intentions of the proprietaries ought naturally to have inſpired, thoſe who bore chief ſway were actuated alone by the vindictive ſpirit of a triumphant faction. They proceeded againſt their opponents by impriſonment, and fine, and baniſhment; who were obliged to flee into Virginia for protection: And with them departed juſtice and freedom from a country, doomed to ſuffer a long miſery, as a puniſhment for its follies or crimes.[36]

This lamentable ſcene of anarchy was not however changed, nor was the condition of the colony meliorated by the arrival of Sothel, the governor, in the year 1683. Though required to expel thoſe from the council who were concerned in the late diſorders; to eſtabliſh a court of the moſt impartial of the inhabitants, for the determination of wrongs done during the diſtractions of the times; to aſſiſt the officers of the cuſtoms in collecting the royal revenue, in executing the acts of navigation; he declined to comply. The annals of delegated authority have not recorded a name which deſerves ſo much to be tranſmitted to poſterity with infamy as that of Sothel. Bribery, extortion, injuſtice, rapacity, with breach of truſt and diſobedience of orders, are the crimes of which he was accuſed during the five years that he miſruled a miſerable colony.[37] Strange, that the man, who had beheld tyranny in all its odious forms on the coaſt of Barbary, did not feel for the ſufferings of men, and re-

ſpect their rights! Driven almoſt to deſpair, the inhabitants ſeized his perſon, in 1688, in order to ſend him to England, to anſwer their complaints: But, upon his intreaties, and offering to ſubmit their mutual accuſations to the next aſſembly, they accepted of his propoſal, with a moderation which ſhews the extent of their wrongs. The aſſembly "gave judgement againſt him in all the above-mentioned particulars, "and compelled him to abjure the country for twelve months, and the "government for ever."[38] Yet at the ſame time that the proprietaries did not altogether approve of the conduct of the people, becauſe "pre-"judicial to the prerogative of the crown and to their honour," they heard, with abhorrence, of their ſufferings; they endeavoured, with a laudable ſpirit, to prevent ſuch for the future.[39] And ſuch was the ſad condition to which North-Carolina was reduced at the epoch of the Revolution, partly by her own folly, but more by the intrigues and crimes of others.

When the diſſatisfaction of the proprietaries with the conduct of Yeamans, which was ſaid *to have altered the face of things*, procured his recal, Joſeph Weſt, whoſe prudent management had recommended him, was in the mean time appointed governor of the Southern colony in May, 1674. He is juſtly celebrated for his courage, his wiſdom, his moderation. And, as the province enjoyed the influence of theſe virtues, it proſpered for ſome years; it felt no other infelicity than what aroſe from a penury which diſabled the planters from diſcharging what they owed to the proprietaries. As the debtors had promiſed to pay the governor's ſalary, which was extremely inconſiderable, as they however failed, there were aſſigned him, in April, 1677, the plantation and ſtock, the merchandiſes and debts, belonging to his conſtituents in Carolina, in diſcharge of his claims. This is the firſt factor, who, at the end of ten years *prudent management*, received the whole product of his traffic, as the reward of his ſervices, without any impeachment of his morals. Other nobles may learn, from this trivial tranſaction, how unprofitable and unavailing it is for them to engage in ſimilar commercial enterpriſes. Yet the proprietaries, by the application of eighteen thouſand pounds, without aiming at the profit of merchants, had maſtered the difficulty of the undertaking:

undertaking: People going thither now at their own expence, and men of eſtate venturing where they were aſſured of fair dealing. It was on this occaſion that the diſſenters, made uneaſy in England by what they beheld, which they deemed nothing to what they dreaded "from a po-"piſh ſucceſſor," emigrated thither in conſiderable numbers. While theſe men augmented its numbers they acquired the honour of introducing religion into Carolina, but with it religious controverſy and political altercation, which neither promoted the intereſts of morality nor of peace. In April, 1679, Charles II. with a munificence which does him honour, ordered two ſmall veſſels to be provided at his expence, to tranſport thither ſeveral foreign Proteſtants, who propoſed to raiſe wine, oil, ſilk, and other productions of the South. He exempted that province from the payment of taxes on theſe commodities for a limited time, though the commiſſioners of the cuſtoms remonſtrated, with a prophetic prudence, againſt "the encouraging of people to remove to the plantations, as too many go thither, to the unpeopling and ruin of the kingdom:" But, owing to their weighty reaſons, there was refuſed an exemption on the exportation of tobacco from Carolina, which was now aſked, which they foretold would occaſion abuſes more eaſy to prevent than to aboliſh. The renown of that country, the encouragement given by the proprietaries, induced many foreigners of various nations to emigrate thither from this time to the Revolution. And though they have never been able to enrich it with the valuable commodities which were now ſo confidently promiſed, their deſcendants form a reſpectable part of the preſent inhabitants. Inſtructed that "the Oyſter-point," ſo delightfully formed by the confluence of the rivers Aſhley and Cooper, was more convenient than what the *firſt ſettlers* had choſen, the proprietaries encouraged the inclination of the people, who began to remove thither in 1679. And, in the ſubſequent year, the foundation was laid of Charles-Town, ſo famous for the regularity of its ſtreets, the extent of its commerce, the elegance of its inhabitants; and, during this year, thirty houſes were built. It was inſtantly declared *the port* for the various purpoſes of traffic, *the capital* for the general adminiſtration of government. But it was long unhealthful. From the month of June to October the courts of juſtice were annually

ſhut

ſhut up; no public buſineſs was tranſacted; men fled from it as from peſtilence; and orders were given to inquire for ſituations more friendly to health. Yet how happy and how ſingular is the reverſe! It is now allowed to enjoy the moſt ſalubrious air of Carolina. And the inhabitants reſort to it at preſent, during the ſame ſeaſon, with the ardour of thoſe who hope to enjoy the greateſt of bleſſings.[40] Men of diſcernment have attributed this fortunate revolution to the diſperſion or purification of the noxious vapour, by the ſmoke iſſuing from the numerous culinary fires.

Notwithſtanding the early inſtructions of the proprietaries to cultivate the good-will of the aborigines, and the more recent orders to prohibit all trade with them for ſeven years, till the inhabitants are more numerous and better able to defend themſelves, a war commenced, in the beginning of the year 1680, with the Weſtoes, a very powerful tribe on the ſouthern boundary; which was "not only extremely troubleſome, "but had well nigh ruined that hopeful ſettlement." The cauſe of hoſtilities, thus inconvenient and dangerous, may be found in injuries, which had been for ſome years mutually given and received, which by both parties were ſtill more dreaded in future. But, as every evil was to be feared, as no poſſible good could be expected, from the continuance of a war which is never attended with glory or profit, a peace was concluded in the ſubſequent year; the old giving ſecurity for the good conduct of the young. In order to prevent the return of ſimilar miſchiefs, that more than ordinary care might be taken to do juſtice to the natives, commiſſioners were appointed by the proprietaries, to decide all complaints between the contending parties. Though the tribes within four hundred miles of Charles-Town were at the ſame time taken under the protection of thoſe noblemen, a diſhonourable practice then commenced, which all their authority was unable to prevent or aboliſh. Not only the principal inhabitants, but the officers of government, encouraged that ſpirit of diſcord which reigns among untutored ſavages, and promoted that inclination for war ſo natural to the American Indian, to every nation in a ſimilar ſtate of improvement, merely with deſign to procure the captives, whom they purchaſed as ſlaves: And they but too frequently inflamed the coloniſts to make war on the men whom they had promiſed to civilize,

civilize, " to introduce to a knowledge of God," whom they were under every obligation to protect. It was in vain for the governor and council to infiſt, as a juſtification, that a policy, which weakened the tribes by their mutual wars, ſecured the colony againſt their attacks; that it was humane to buy priſoners who were already doomed to die: The proprietaries, diſſatisfied with theſe reaſons, repreſented, how jealous they were that the private gains, which ſome make by the traffic for ſlaves, ſway more to theſe opinions than the public ſafety; that they could not anſwer it to God, to the king, to the people intruſted to their government, any longer to ſuffer a conduct which had been ſo detrimental to the province, by diſcouraging many conſiderable perſons from going thither. Yet it required the future remonſtrances of the proprietaries, againſt " this barbarous practice," to procure a law to regulate, and at length to prohibit, what was ſo ignoble in itſelf, and had given ſuch deſerved offence." A mutual hatred then commenced between the natives and the coloniſts, which length of time has been unable to allay. And the aborigines in after-times revenged ſeverely their miſconduct or crimes upon the innocent poſterity of the original ſettlers; making Carolina regret that her founders had reduced the freeſt of men to a condition more truly deplorable than that of the beaſts, their fellow-labourers, unconſcious of what the others had loſt.

While the province thus ſuffered complicated ills from the miſconduct of her governors, the proprietaries exerted themſelves to promote her populouſneſs, her ſecurity, her happineſs. At the deſire of ſeveral wealthy perſons, who propoſed to emigrate thither, they " once more" reviſed the unalterable conſtitutions. They declared, that no farther changes ſhould be made without the conſent of the repreſentatives of the people. It is unneceſſary to point out the nature of alterations which were never admitted in Carolina, though they relaxed the rigour of the conſtitutions in favour of freedom: For the people were perſuaded to ſee, in a meaſure intended probably for their good, the danger of deſtructive precedent. Incited by theſe attentions, Fergusſon not long after conducted thither an emigration from Ireland, which inſtantly mingled with the maſs of the inhabitants. Lord Cardroſs led a colony from Scotland, which

which ſettled at Port-royal; which claiming, from an agreement with the proprietaries, co-ordinate authority with the governor and grand council of Charles-Town, was compelled, with circumſtances of outrage, to acknowledge ſubmiſſion; and, having provoked the Spaniards at St. Auguſtine, by inciting the Indians againſt them, the Scottiſh ſettlement was in after-times totally deſtroyed: Thus acquiring, when it was no more of any avail, that prudence, from ſad experience, which its leaders ought always to have poſſeſſed and exerted. Though the province had been formed before this time into manors and baronies, as caciques and landgraves were created, yet it was during the year 1682 that it was firſt divided into three counties. Berkeley filled the ſpace around the capital as far as Stono-creek on the north, and the Sewee on the ſouth. Craven occupied the diſtrict to the northward of it, towards Cape Fear, which was formerly denominated Clarendon, the moſt ancient ſettlement of the whole. On the ſouth, Colleton contained Port-royal and the lands in its vicinity, to the diſtance of thirty miles. Yet the firſt only was ſo ſtocked with inhabitants as to be honoured with a county-court for the determination of its local affairs: And at Charles-Town the twenty members, which compoſed the lower houſe of parliament, were choſen. Such was the inconſiderable progreſs of a province which afterwards became ſo opulent and great. Weſt held a parliament in autumn, 1682; wherein were enacted laws for the ſettling a militia, which the late war had taught them to be ſo neceſſary; for making ways through the boundleſs foreſt which every where ſurrounded the capital; for promoting the morality of a people who did not enjoy the inſtruction of a public miniſtry. And that gentleman immediately reſigned his adminiſtration to Joſeph Moreton, who was deemed at that time worthy of this important truſt.[42] Then commenced that re-iterated change of governors, appointing ſucceſſively Kyrle, Weſt, Quarry, Moreton, of every public officer, which was productive of thoſe evils in Carolina that have uniformly attended it in every country on earth; the degradation of the proprietary government; the introduction of faction; the turbulence of a people no longer attached to their benefactors and rulers.

Moreton

Moreton convened a parliament in September, 1683. And it eſtabliſhed a great variety of regulations for thoſe little inconveniences which all colonies experience in their early years; becauſe laws every where ariſe from the wants of men, and not from the ſpeculations of theoriſts. In order to remedy the diſtreſs felt from the want of a common meaſure of commerce, "the value of foreign coins was raiſed;" which firſt gave riſe to the currency of Carolina, that in after-times became ſo extremely depreciated. In imitation of the former conduct of Albemarle, "all proſecu-"tions for *foreign debts* were ſuſpended:" But the proprietaries beholding, not long after, with abhorrence, what they had lately confirmed without animadverſion, diſſented from this law, becauſe it was contrary to the king's honour, ſince it was in effect to ſtop the courſe of juſtice; becauſe the parliament had no power to enact a law ſo contrary to thoſe of England: And, aſtoniſhed that their deputies would have aſſented to what gave ſuch juſt offence, they iſſued orders, "that all officers ſhould "be diſplaced who had promoted it."[43] The repreſentatives ſent to this parliament ſeem to have been choſen contrary to inſtructions which had been tranſmitted the year before; that, of the twenty members, Berkeley and Colleton ſhould each chooſe ten: The people of the former, becauſe moſt numerous, oppoſing any choice by the latter; and the third county being yet too little inhabited to be thought worthy of that important privilege. But, conſidering it as a very unequal thing that the other inhabitants ſhould be deprived of "the right of repreſentation," by a combination to have all members choſen at Charles-Town, the proprietaries gave orders that the preſent ſhould be diſſolved, and no other parliament called till their inſtruction ſhould be complied with. But they iſſued their commands in vain. And we ſhall behold, in after-times, the people riſing as one man to put an end to this ſignal inequality, which was at length countenanced by the power that now wiſhed to aboliſh it; becauſe the ſentiments of men changed with the new ſituation to which all had arrived. Senſible of the reiterated miſbehaviour of their deputies, the proprietaries informed the governor and council, in language which at leaſt ſhews good intentions: "We would have you take no-"tice that power of magiſtracy is put into your hands for the good of

" the people, who ought not to be turned into prey, as we doubt hath " been too much practiſed." It is remarkable enough, " that the " greateſt dealers in Indian ſlaves were the fierceſt ſticklers againſt al- " lowing members of parliament to Colleton county:"[44] Thus affording an example, how men, by acquaintance with corruption, become ſteeled againſt the ſenſe of what they owe to the rights of others.

The war, which the ambition of Lewis XIV. lighted up in Europe during that age, put in motion numerous privateers, whoſe ſucceſsful depredations encouraged the people of Carolina to purſue ſimilar projects. But the too anxious zeal of Charles II. to preſerve a neutrality with regard to the belligerent powers, induced him to tranſmit, in April, 1684, a declaration of his intentions, which the proprietaries ordered ſhould be punctually executed: And this meaſure gave a check to enterpriſes that were as contrary to the law of nations as they were pernicious, by promoting what are inconvenient every where, but deſtructive of an infant colony; *the deſire of ſudden wealth, the ſpirit of diſſipation.*[45] The peace which enſued, by an eaſy gradation, transformed the privateers into pirates, which long infeſted the American ſeas, which almoſt annihilated commerce. The governor of Carolina, the proprietary-deputies, the principal inhabitants, all degraded themſelves to a level with the meaneſt of mankind, by aſſiſting pirates, by receiving the plunder of nations. The proprietaries remonſtrated againſt practices that reflected infamy on the province: But in vain did they diſplace their officers, when the numbers and credit of the offenders in ſome meaſure ſanctified the crime.[46] Charles II. urged by his allies, and ſenſible how much the trade of his own ſubjects had been injured, tranſmitted, in April, 1684, " a law againſt pirates," which the proprietaries required might be enacted by the parliament, which they afterwards confirmed, and ordered to be rigorouſly enforced. But unexecuted laws are a dead letter: And what had been ſo gainful, however diſhonourable, ſettled into a general uſe. The naval knowledge of James II. acquired him the honour of deſtroying the enemies of mankind. He detached Sir Robert Holmes, with a ſmall fleet, in Auguſt, 1687, and with an extraordinary commiſſion, " for ſuppreſſing pirates in the Weſt-Indies." Notice of both

was

was ſent to the governor and council at Charles-Town, who received orders to ſhew an example of ſubmiſſion to his powers, to afford every aſſiſtance to his armament.[47] And this ſenſible project proved at length ſucceſsful; till new cauſes not long after gave riſe to piratical adventures, which required the continued energy of William and Anne to ſuppreſs.

The diſgrace, with which thoſe piracies covered South-Carolina, was not the only inconvenience that they entailed on it. The Spaniards, at St. Auguſtine, had always viewed the Southern plantations with peculiar jealouſy; they ſuſpected the coloniſts, with reaſon, of inflaming the Indians againſt them; and they beheld, with indignation, the plunderers of their wealth openly encouraged at Charles-Town: They at firſt threatened hoſtilities; but, towards the end of the year 1686, they invaded the ſouthernmoſt frontiers, and laid waſte the feeble ſettlements of Port-royal. Unable to defend a wide extended boundary, the Carolinians, countenanced by the governor and council, and perſuaded that they had ſufficient authority from their charter to make war on their neighbours, prepared to take St. Auguſtine; to defend themſelves, by ſtriking boldly at once at the heart of their enemy. But the proprietaries, informed of this project, remonſtrated: "That every rational man muſt have fore-"ſeen that the Spaniards, thus provoked, would aſſuredly retaliate; "that the clauſe in the patent, that had been relied on to juſtify the "meaſure, meant only a purſuit in heat of victory, but not a deliberate "making war upon the king of Spain's ſubjects within his own territo-"ries; nor do we claim any ſuch power: No man, however, can think "that the dependencies of England can have power to make war upon "the king's allies without his knowledge or conſent."[48] A clauſe, ſimilar to that before alluded to, was inſerted in every colonial charter, out of abundant caution; but it was merely declaratory of the common law, which would have taken place without it, wherever Engliſhmen formed a colony. For the right of ſelf-defence is inſeparable from man, whitherſoever he goes. The conſtruction of the proprietaries is equally ſenſible and deciſive. And, though the coloniſts of New-England purſued a different rule, it may ſafely be aſſerted, that it is altogether contrary to principle to argue that the dependent territories of a ſtate may right-

fully make war or peace without its knowledge and aſſent. For, the ſovereign nation might be involved in warfare, and bloodſhed, and expence, till it ceaſed to be at all. The proprietaries prudently diſſented to the law for raiſing men and money for the projected invaſion of the Spaniſh territories. The inhabitants being either convinced by the reaſonings of the remonſtrance before-mentioned, or the ſinews of war being thus cut aſunder, the expedition was diſcontinued. And thoſe prudent noblemen congratulated the governor and council upon this event in terms which ſhewed how much in earneſt they had been: "We are glad you have "laid aſide your project, as, had it proceeded, Moreton, Godfrey, and "others, might have anſwered it perhaps with their lives." While they were ordered to write "a civil letter" to the governor of St. Auguſtine, to inquire by what authority he acted, they were warned to put the province in the beſt poſture of defence.[49] At that time a mutual hatred and dread of each other commenced, between the Carolinians and Spaniards, which ceaſed only when the latter ceaſed to be the lords of Florida.

The demiſe of Charles II. being mean-while formally communicated to the governor and council, James II. was joyfully proclaimed. For the people, either too much engaged in domeſtic faction, in throwing off grievances which they deemed intolerable, becauſe they had felt no real ones; or in acquiring wealth by the plunder of their neighbours; little intereſted themſelves in European politics or intrigues. And, in return for *their expreſſions of loyalty*, this monarch aſſured them of his protection, with an unuſual inſincerity, while he meditated the revocation of a patent which had conferred the moſt important privileges.[50] The firſt collector was eſtabliſhed at Charles-Town during the year 1685; becauſe at that time its commerce, inconſiderable as it then was, began to attract the notice of the world. The governor and council were at the ſame time ordered "not to fail to ſhew their forwardneſs in aſſiſting of the "collection of the duty on tobacco tranſported to other colonies; in "ſeizing ſhips that preſumed to trade contrary to the acts of navigation." But the commands of the proprietaries were never received with much attention in a province where, in theory, they ſeem to have engroſſed all power. And, as during the preſent ſeaſon, little regard was paid to orders

orders ſo contrary to the views of every one, an illicit trade was not only practiſed, but juſtified under a clauſe of the patent, *which the people believed to be of ſuperior force to the law.* Yet the proprietaries *never claimed any exemption by virtue of their charter:* Nor did it in the leaſt ſupport a pretenſion ſo contrary to itſelf. For, as we have ſeen, it expreſſly required the ſubmiſſion of the coloniſts to commercial regulations, to the payment of the uſual cuſtoms. Though the royal grant of 1665 was paſſed ſubſequent to the act of navigation, the preſent exemption was, *notwithſtanding*, inſiſted on, with the ſame ſpirit that it was contended, during this reign, that a king of England may diſpenſe with the law. The principle of the Carolinians, and the doctrine ſo faſhionable at the court of James, which ſapped the foundations of his throne, were therefore exactly the ſame. But how amuſing is it to trace the extraordinary changes which often happen in the ſentiments of men! The Revolution, the claim of rights, were ſuppoſed to have buried *the diſpenſing power* for ever in oblivion. Yet it has been revived during recent times, in order to build on it ideal ſyſtems, though the actual exertion of it would be oppoſed with a zeal irreconcileable to the ſincerity of thoſe who maintain it. Neither awed by the authority, nor convinced by the reaſonings, of the proprietaries, the provincials continued the practice which they had avowed as legal. While their veſſels were ſeized, the court of England was filled with complaints of the irregularity of their conduct. And, when the reigning prince had adopted the reſolution of annihilating all proprietary governments, a writ of quo-warranto was iſſued againſt the patent of Carolina. Thus, neither their ſubmiſſion to every royal mandate, nor their readineſs to aid, with their feeble power, in the collection of the royal revenue, in the execution of the acts of navigation, protected the rights of the proprietaries from attack. Yet, prudently bending before a ſtorm which it ſeemed vain to reſiſt, they eluded the force of a blaſt that had laid the charters and governments of New-England in ruins. And, by offering a treaty for a ſurrender, they gained that precious time, which, in political intrigue, is generally of ſuch deciſive conſequence.[51]

Oppoſed

Oppoſed in all their views by the men whoſe duty it was to promote them, and offended at the reiterated diſobedience of their officers, the proprietaries, in Auguſt, 1686, appointed James Colleton governor; expecting much from his talents, but more from his attachments. The commencement of his adminiſtration ſeems to have given ſatisfaction to every one. But his inſtructions, which required him to puniſh the former governor and officers for various offences, to execute that law againſt pirates with rigour which was ſo contrary to the ruling principles of the times, naturally rendered him obnoxious to ſuch a people, during the ſeaſon of univerſal degeneracy.[52] The form of the conſtitution, compoſed of a variety of juriſdictions, and inveſting the parliament with the choice of members for the grand council, neceſſarily gave riſe to perpetual intrigue: And factions, conſiſting of men of various views, and avowing different principles, "ſprang up, as we are aſſured, as rampant "there, as if the people had been made wanton by many ages of proſpe-"rity."[53] An aſſembly having been called, in November, 1685, a majority of the members refuſed to acknowledge the authority of the fundamental conſtitutions, becauſe they deemed that writing to be genuine which the proprietaries had tranſmitted as a ſketch. Theſe were excluded the houſe, as men who ſtruck at the very foundation of the government. But, proteſting againſt the validity of laws that ſhould be made by a minority of the commons, they retired into the country; ſpreading their own principles and diſcontents among a people whoſe minds had been already prepared to liſten to both with favour. When a new parliament was therefore called, in the year 1687, "they choſe members, "ſays their hiſtorian, to oppoſe whatſoever the governor propoſed."[54] From an aſſembly, which convened in ſuch a diſpoſition, no laws, either ſalutary or evil, were to be expected. Animated by the pertinacity natural to the diſcontented, it refuſed to ſettle a militia-act, though the ſafety of the province depended upon it: And, "becauſe ſome members were "not humoured in every thing, they declined to paſs any law at all." Apprehenſive, during this ſituation of affairs, of an invaſion from the Spaniards and their Indian allies, the governor publiſhed an ordinance, declaring martial law, and requiring every one to appear in arms for the defence

defence of the province. However neceſſary, however conſiſtent with the declarations of the charter, this meaſure was certainly imprudent, becauſe the coloniſts were more inclined to turn their arms againſt their ruler than againſt the public enemy: And his opponents gave out, that nothing more was intended than to acquire for himſelf the monopoly of the Indian trade. He entirely loſt what it is of the greateſt conſequence for all rulers to poſſeſs, the affections of the people, becauſe every thing was believed of the object of their diſlike. By the diſſolution of the aſſembly, the province was left deſtitute of any ſtatute-law as a rule of conduct. Though all parties lately rejoiced in the felicity of James for the birth of a ſon, William and Mary were ſoon after proclaimed with an apathy, which ſhews how much they were intereſted in the diſtracted ſtate of their own affairs,[55] which all governors ought to dread as the greateſt misfortune, becauſe a government that is looked up to with indifference is already undone.

During this ferment, Seth Sothel, whom we have ſeen baniſhed from Albemarle, and recalled by the proprietaries to juſtify his conduct, ſuddenly arrived at Charles-Town. Countenanced by a powerful faction, and preſuming on his powers as a proprietary, he ſeized the reins of government, in the year 1690, notwithſtanding the oppoſition of the governor and council,[56] who proteſted in vain when the public voice ran in his favour. He eaſily granted the prayer of petitions which had been ſuggeſted by himſelf for convening a parliament: And, during the diſtraction of the times, it was eaſy to procure the general return of members, who were ready to ſanctify by their votes whatſoever ſhould be dictated by thoſe who had thus acquired power. Colleton, whoſe conduct had been far from blameleſs,[57] was inſtantly impeached of high crimes and miſdemeanours, and diſabled from holding any office, and baniſhed. Others, who were accuſed of abetting his tyranny, were fined, impriſoned, and expelled the province. But the proprietaries heard, with aſtoniſhment, of the proceedings of Sothel and his parliament; and, conſidering the whole as illegal, diſſented from laws which partook ſo much of the violence and irregularity of the framers of them.[58] They wrote the ſtrongeſt letters of recal to the man whom, though a proprietary, they conſidered as

as an uſurper; threatening, if he refuſed to obey, to lay his proceedings before the king, to procure a mandamus "to compel his appearance in "England."[59] They appointed a new governor, in the year 1692, with orders "to inquire into the grievances complained of, and to in-"form them what was beſt to be done."[60] They granted to the inhabitants a general pardon for crimes formerly committed:[61] And in April, 1693, they reſolved: "That, as the people have declared they would "rather be governed by the powers granted by the charter, without re-"gard to the fundamental conſtitutions, it will be for their quiet, and "the protection of the well-diſpoſed, to grant their requeſt."[62]

Thus, at the end of three and twenty years, periſhed the labours of Locke: Thus was abrogated, upon the requiſition of the Carolinians, who had ſcarcely known one day of real enjoyment, a ſyſtem of laws which had been originally intended to remain for ever ſacred; which, far from having anſwered their end, introduced only diſſatisfaction and diſorders, that were cured at length by the final diſſolution of the proprietary government. The Carolinian annals ſhew all projectors the vanity of attempting to make laws for a people, whoſe voice, proceeding from their principles, muſt be for ever the ſupreme law. How inadequate muſt have been the conſtitutions, or how defective the execution, which neither enſured obedience to the proprietaries, nor ſatisfaction to the governed! It was not till ſeven and twenty years after that this proprovince acquired the preſent appellations of *North* and *South Carolina:* It was not till it was bleſſed with a ſimple form of government that it began to proſper; when the one acquired the manufacture of *naval ſtores*, the other the production of rice and indigo; which have made both, in modern times, populous, wealthy, and great.

AUTHORITIES AND NOTES.

[1] L'Eſcarbot's Hiſt. of N. France, p. 225, 401; which was written by an advocate of Paris as early as the year 1606. — [2] Hackluyt's Voy. 1 v. p. 737-48-70. — [3] Carolina Ent. 1 v. p. 6. — [4] Hutch. Hiſt. Maſſ. 1 v. p. 226. — [5] Carol. Ent. 1 v. p. 1-15. — [6] Ib.

[7] See

[7] See Sir William Berkeley's inſtructions, Car. Ent. 1 v. p. 4; and ſee p. 22-29. The ſubjoined *letter from the proprietaries to that gentleman* not only throws conſiderable light on this obſcure portion of the hiſtory of Carolina, but will explain to the planter and to the practical lawyer the reaſon that the moſt ancient patents for land of this colony are ſigned by *William Berkeley*. — From Car. Ent. 1 v. p. 6.

" Sir, Cockpit, 8 Sept. 1663.

Since you left us we have endeavoured to procure, and have at length obtained, his majeſty's charter for the province of Carolina: A copy of which we do herewith ſend you. Since the ſealing whereof there hath ſtarted a title, under a patent granted in the 5 year of King Charles I. to Sir Robert Heath, under which there hath been a claim by the duke of Norfolk's agents, and another by Sir Richard Greenfield's heirs; but that all thoſe that ſhall plant notwithſtanding that patent are, by an act of king and council, ſecured, and that patent by king and council made null, and ordered to be made ſo by the king's attorney in the courts of law; a copy of which order we herewith ſend you; ſo that no perſon need ſcruple planting under our patent: Beſides, we have many more advantages than is in the other to encourage the undertakers. We are informed, that there are ſome people ſettled on the north-eaſt part of the river Chowan, and that others have inclinations to plant there, as alſo on the larboard ſide, entering of the ſame river; ſo that we hold it convenient that a government be forthwith appointed for that colony: And for that end we have, by captain Whittey, ſent you a power to conſtitute one or two governors and councils, and other officers; unto which power we refer ourſelves, we having only reſerved the nomination of a ſurveyor and ſecretary, as officers that will be fit to take care of your and our intereſts; the one by faithfully laying out all lands, the other by juſtly recording the ſame. We do likewiſe ſend you propoſals, to all that will plant, which we prepared upon receipt of a paper from perſons that deſired to ſettle near Cape Fear, in which our conſiderations are as low as it is poſſible for us to deſcend. This was not intended for your meridian, where we hope to find more facile people; who, by your intereſt, may ſettle upon better terms for us, which we leave to your ma-

nagement, with our opinion that you grant as much as is poſſible, rather than deter any from planting there. By our inſtructions and propoſals you will ſee what proportions of land we intend for each maſter and ſervant, and in what manner to be allowed; but we underſtand that the people that are there have bought great tracts of land from the Indians; which, if they ſhall enjoy, will weaken the plantation; firſt, becauſe thoſe perſons will probably keep all thoſe lands to themſelves, and ſo make the neighbourhood of others remote from their aſſiſtance, in caſe of danger; ſecondly, if any new comers would ſettle near their habitations, they will not, peradventure, admit it without purchaſing, and poſſibly upon hard terms, which will diſcourage people from planting: Wherefore it is our reſolution and deſire that you perſuade or compel thoſe perſons to be ſatisfied with ſuch proportions as we allot to others, which will be more than any ſuch number of men, to and for whom theſe proportions are to be given, can manage, and therefore enough; more will but ſcatter the people and render them liable to be eaſily deſtroyed by any enemy; ſo that the fixing the way that our inſtructions mention, will be the beſt courſe of ſettling as we conceive: However, we do leave it to you that are on the place and can beſt judge. The reaſon of giving you power to ſettle two governors, that is, of either ſide of the river one, is, becauſe ſome perſons that are for liberty of conſcience may deſire a governor of their own propoſing, which thoſe on the other ſide of the river may not ſo well like; and our deſire being to encourage thoſe people to plant abroad, and to ſtock well thoſe parts with planters, incite us to comply always with all ſorts of perſons, as far as poſſibly we can. You will be beſt able to judge when you hear all parties, and therefore refer the thing wholly to you. The entrance into Chowan river is difficult, and water but for ſmall veſſels: But we underſtand that there is an entrance, bold and deep water in the latitude of 34, which is near the rivers called the Neus and Pimlico, which we conceive may be beſt diſcovered from your parts. In order to which, we deſire you to procure at freight or otherwiſe ſome ſmall veſſel, that draws little water, to make that diſcovery and ſome others into the Sound, through which great ſhips may, peradventure, come to Chowan, and give us admittance into the other brave

brave rivers that lie in the Sound; and, whilſt they are abroad, they may look into Charles-river, a very little to the ſouthward of Cape Fear, and give us an account of what is there. This work we hold neceſſary to be done, that the king may ſee we ſleep not with his grant, but are promoting his ſervice, and his ſubjects profit. By captain Whittey's relation, you may eaſily paſs by land and river from your government to Chowan river, and ride but twenty-five miles by land, which makes us preſume earneſtly to entreat you to make a journey thither, whereby you may, upon your own knowledge, give us your opinion of it, and direct ſuch diſcoveries to be made by that river as you ſhall ſee fit. We remain, &c."

[8] Car. Ent. 1 v. p. 8-10-12-18-20. — [9] See this charter, in Car. Ent. N°. 2. p. 1-38. — The proprietaries, writing to colonel Ludwel, the governor, in April, 1693, remarked: "We are informed, that ſome in "Carolina ſay, the laws of England are not in force there: But, by "thoſe gentlemens favour, who ſo ſay, it is expreſſed in our grant from "the crown, that the inhabitants of Carolina ſhall be of the king's al-"legiance, which makes them ſubject to the laws of England." — Ib. p. 219. — Such were the ſentiments of rulers and people during that age. Yet the inference of the proprietaries ſeems extremely juſt: That, as the Carolinians were Engliſh ſubjects they neceſſarily owed ſubjection to Engliſh laws. For it is a propoſition which at firſt ſight appears extremely incongruous, and not eaſily proved; that the rules preſcribed by the legiſlature of a ſtate *are not* all equally obligatory on the people of the ſame ſtate.

[10] Com. Jour. 9 v. p. 16. — [11] Car. Ent. 1 v. p. 18-19. — [12] Ib. p. 23-48-52. — [13] There is a printed copy of the conſtitutions among *the papers of Carolina*; a copy is ſubjoined to the works of the author. It is a remarkable ſingularity in the hiſtory of this province, that the identity of the inſtrument which was deſigned to be its *great charter* was diſputed. The proprietaries tranſmitted, in July, 1669, *a rough ſketch* of what was in contemplation, and the perfect conſtitutions were ſigned by them in the ſubſequent March: The former, being moſt favourable to the intereſts of the people, were accepted; the latter were ſoon after denied to be genuine, and exploded: And this was the chief cauſe of the abroga-

tion of that famous ſyſtem, in the year 1693. — Car. Ent. 2 v. p. 108-9; and ſee the repreſentation to Seth Sothel, in old Ent. N°. 2.

[14] Car. Ent. 1 v. p. 31-46-81. — [15] Ib. p. 66-71.

[16] Ib. p. 66-72-9-93. — The ſubjoined *letter, from the proprietaries to the governor and council at Aſhley-river*, illuſtrates this obſcure part of its annals, and will demonſtrate not only the temper of rulers and coloniſts, but at whoſe expence the preſent opulent province of Carolina was planted.

" Gentlemen, Whitehall, 8 May, 1674.

We have herewith ſent a patent to Mr. Weſt to be landgrave, and a commiſſion to be governor, who has all along, by his care, fidelity, and prudence, in the management of our affairs to our general ſatisfaction, recommended himſelf to us as the fitteſt man there for this truſt. This we cannot forbear plainly to ſay, though we have a great regard to Sir John Yeamans, as a conſiderable man that hath come and ſettled amongſt us. When Mr. Weſt had formerly the management of affairs, things were then put into ſuch a poſture (as appears by the act of parliament made at the latter end of his government, which we herewith ſend you confirmed). Then we had ſome encouragement to ſend ſupplies to men who took into conſideration how we might be reimburſed as well as they could, which was all we expected: But immediately with Sir John Yeamans's aſſuming the government the face of things altered. The firſt news was of ſeveral propoſals for the increaſing of our charge; the ſame hath ever ſince continued on, and in our very laſt diſpatches a ſcheme ſent to us of ways of ſupplying you, which would preſently require the diſburſement of ſeveral thouſand pounds; and all this without the leaſt mention of any thought how we might be repaid either our paſt debts, which already amount to ſeveral thouſand pounds, or be better anſwered for the future: But, inſtead thereof, complaints made, and reproaches inſinuated, as if we had dealt ill or unjuſtly by you, becauſe we would not continue *to feed and clothe you without expectation or demand of any return.* This, we muſt let you know, put a ſtop to your ſupplies more than the Dutch war: For we thought it time to give over a charge which was like to have no end, and the country was not worth the having at that

that rate: For it muſt be a bad ſoil that will not maintain induſtrious people, or we muſt be very ſilly that would maintain the idle. But we have no ſuſpicion at all of the barrenneſs or any bad qualities of the country; which ſome of us are ſo well aſſured of, that at their own private charge they are going to ſettle a plantation at Ediſto, without expecting a farthing aſſiſtance from us. That Sir John Yeamans's management has brought things to this paſs, we are well ſatisfied; which yet we cannot charge upon his miſtake; the character we have received of him, and his long acquaintance with Barbadoes and the world, give us other thoughts of him; and perhaps it would very well have ſerved his purpoſe if we had ſupplied you, and he had reaped the profits of your labour at his own rates, and our own plantation been ſo ordered, that, in reputation, people, and improvement, it might arrive at no other pitch than to be ſubſervient, in proviſions and timber, to the intereſt of Barbadoes. Conſidering at what rates Sir John bought your poor planters proviſions in their neceſſity, and how induſtrious and uſeful to you the generality of the people that came from Barbadoes have been, and then tell us whether we have not reaſon to be of this mind: For we would not have thoſe that went from hence (whom we are ſtill willing to encourage) be any longer miſled; and the people that have come to you from New-York and the northward have, by their planting and way of living amongſt you, fully ſatisfied us that they are friends to, and do in earneſt mean and deſire the ſettlement and proſperity of our province. Being therefore willing to give all reaſonable encouragement to honeſt and induſtrious men, we have ſent another ſupply for clothes and tools, and have entered into an engagement one to another to ſend one yearly to you, whereby our ſtores ſhall never want neceſſaries for the uſe of the induſtrious planter, to be had at moderate rates by thoſe that will pay for them: Yet we do not intend any more careleſſly to throw away our ſtock and charges upon the idle: For, though we, the lords proprietors, have tied one another by covenant, that none ſhall be behind other in the charge of carrying on this plantation, yet we are all agreed not to make any more deſperate debts amongſt you, though we intend to be at the charge of procuring vines, olives, or any other uſeful

plants

plants or commodities fit for your climate, out of any part of the world, and men ſkilled in the management of them. And therefore, if you intend to have ſupplies for the future, you will do well to conſider how you are to pay us, in what commodities you can beſt do it, and how the trade of thoſe commodities you can produce may be ſo managed as to turn to account: For, in our trade with you, we aim not at the profit of merchants, but the encouragement of landlords. In your letter you have been frequent in the mention of a ſtock of cattle; but, not having paid us for tools and clothes, how do you think that we ſhould be at ſo far a greater charge in cattle? You ſay it will enable you to pay your debts; but do you not think, if we bring cattle thither, we, who do not want ground, can keep them, and make the profit of our charge, and venture as well as others, eſpecially it being our deſign to have planters there, and not graziers? For, if our inclinations were to ſtock Carolina at that rate, we could do better by bailiffs and ſervants of our own, who would be more obſervant of our orders than you have been; plant in towns where we directed them; take up no more land than what they had uſe for; nor, by a ſcattered ſettlement, and large tracts of land taken up, not like to be planted theſe many years, exclude others from coming near them; and yet complain for want of neighbours. We reſt your very affectionate friends,

Craven, Shafteſbury, G. Carteret."

[17] Car. Ent. 1 v. p. 111-17-18. — [18] Ib. Car. Pap. p. 255. — [19] Same Papers, p. 224-46. — [20] Laws, Virg. p. 127. — [21] Miller collected, from July to December, 1677, 327068 lb. weight of tobacco, and 1242 l. 8 s. 1 d. ſterling; being the parliamentary duty of one penny a pound on tobacco exported to other colonies: As almoſt the whole was ſent to New-England, whence it was carried all over Europe, the annual parliamentary revenue, ariſing in that little colony, amounted to 3000 l. ſterling, though it was very badly collected. Car. Pap. p. 246. — [21] Ib. 255. — [22] Among the ſame papers there are ſeveral *affidavits*, which uniformly aſſert: That the traders of New-England were extremely active in fomenting and ſupporting the rebellion; ſee p. 303-17. — A perſon, who was known

known by the name of *the Boſton ambaſſador*, was extremely active among the late *regulators* of North-Carolina. The maſters and ſailors of the ſhips of New-England were equally inſtrumental in promoting the more recent diſturbances of that province. Mankind ſhould make a common cauſe againſt a people whoſe rooted principles neceſſarily incite them to diſturb the repoſe of their neighbours. — [24] Ib. p. 225-55.

[24] The following *remonſtrance of the inhabitants of Paſquetanke, to all the reſt of the county of Albemarle*, (from Car. Pap. p. 299.) will ſhew the extent of the talents of the framers of it, and of the underſtandings of the men who could be influenced by it.

" Firſt, The occaſion of their ſeizing the records and impriſoning the preſident, is, that thereby the county may have a free parliament, and that from them their grievances may be ſent home to the lords; which are briefly theſe: In the firſt place, (omitting many heinous matters,) he denied a free election of an aſſembly, and hath poſitively cheated the country of one hundred and thirty thouſand pounds of tobacco, which hath raiſed the levy to two hundred and fifty pounds of tobacco a head more than otherwiſe it would have been; beſides, near twenty thouſand pounds of tobacco charge he hath brought upon us by his piping-guard. And now captain Gillam is come among us with three times the goods he brought laſt year, but had not been two hours aſhore, but, for the ſlip of a word, was arreſted for one thouſand pounds ſterling; and many affronts and indignities put upon him by the preſident himſelf; inſomuch that had he not been earneſtly perſuaded by ſome, he had gone directly out of the country: And the ſame night, about midnight, he went on-board with a brace of piſtols; and, preſenting one of them cocked to Mr. George Durant's breaſt, and with his other arreſted him as a traitor. And many other injuries, miſchiefs, and grievances, he hath brought upon us, that thereby an inevitable ruin is coming, (unleſs prevented,) which we are now about to do, and hope and expect that you will join with us therein: And ſubſcribed this the 3d December, 1677.

Signed by thirty-four perſons."

[25] The

[25] The two ſubjoined papers will throw ſufficient light on the origin and progreſs of an inſurrection, which has been ſo little noticed by hiſtorians, which has hitherto remained in perfect obſcurity.

Extract of the caſe of the commotions of Albemarle, preſented by the proprietaries to the committee of foreign plantations. — From Carolina Papers, p. 255.

" Mr. Cartwright, the governor, returning to England, left the government in ill order and worſe hands; the proprietaries reſolved to ſend another governor, and ſuch a one as would put in execution their inſtructions, orders, and deſigns: The former governors having very much failed them, eſpecially in two points. The firſt was, the encouraging the New-England trade there; the ſecond, their diſcouraging the planting on the South-ſide of the river Albemarle. The latter was extremely the intereſt of the proprietaries, but croſſed always by the governors and ſome of the chief of the country, who had engroſſed the Indian trade, and feared that it would be intercepted by thoſe that ſhould plant farther amongſt them. The illneſs of the harbour was the cauſe that this northern part of Carolina had no other vent for their commodities, but either by Virginia, where they paid a duty to the governor, or to New-England, who were the only immediate traders, and ventured in ſmall veſſels; and had ſo managed their affairs that they bought their goods at very low rates; eat out and ruined the place; defrauded the king of his cuſtoms; and yet governed the people againſt their own intereſts. To cure theſe evils, the proprietaries made choice of one Mr. Eaſtchurch to be their governor; whom we diſpatched in ſummer, 1677, together with Mr. Miller, who was the king's officer, and made by us one of our deputies. They took their paſſage to Mevis; where Mr. Eaſtchurch, meeting with a woman of a conſiderable fortune, married her, and ſent away Mr. Miller to Carolina, to ſettle affairs againſt his coming, who carried with him a commiſſion, as preſident of the council, till his arrival, with very full powers. He was quietly received and ſubmitted to as governor and collector. In diſcharge of the laſt he made conſiderable progreſs. But, as governor, he did many very extravagant things; whereby he loſt the

the affections of the people. In the mean time there arrived captain Gillam, in a ſmall armed veſſel, with Durant; and about the ſame time Culpeper, who, finding that Miller had loſt his intereſt, ſtirred up a commotion; ſeized him and all the writings belonging to the proprietaries, and the tobacco belonging to the king's cuſtoms; which they employed in ſupporting their unlawful actions. Culpeper was a very ill man, having ſome time before fled from South-Carolina, where he was in danger of hanging, for endeavouring to ſet the poor people to plunder the rich. Gillam, he, Crawford, and ſome other New-England men, had a deſign (as we conceive) to get the trade of this part of the country into their own hands for ſome years at leaſt: And not only defraud the king of all his cuſtoms, but buy goods of the inhabitants at their own rates. When theſe men had formed themſelves into what Culpeper calls the government of the country, Mr. Eaſtchurch arrives in Virginia, whoſe commiſſion and authority they had not the leaſt reaſon to diſpute; yet they kept him out by force of arms, ſo that he was conſtrained to apply to the governor of Virginia for aſſiſtance to reduce them; which had been done, but he unfortunately died. Preſently after the inſurgents ſent two commiſſioners to promiſe all obedience to the proprietaries, but inſiſting very highly for right againſt Miller."

Extract of a repreſentation, preſented to the proprietaries. — From Carol. Pap. p. 225.

" The rebellion of the inhabitants of Albemarle was not accidental; or aroſe from any ſudden provocation; but rather was the effect of a deliberate contrivance, which appears from theſe particulars, that can be proved by undoubted witneſſes. The heads of the rebellion, at ſeveral times, diſturbing the courts of juſtice, ſubverting the government, diſſolving parliaments; their induſtrious labour to be popular, by continually making factions and parties; their poiſoning the people's ears and diſquieting their minds, by diffuſing abroad dangerous and falſe reports; namely, that the proprietaries intended to raiſe the quit-rents to two-pence, and from that to ſix-pence, an acre; their general arming upon the firſt appearance of Gillam's ſhip in Paſquetanke river, and im-

priſoning the proprietaries deputies, and putting the preſident in irons; their arrogating to themſelves the ſupreme power, by firſt diſſolving, then erecting, courts of juſtice; by convening parliaments without writs; and appointing all officers."

[26] The ſubjoined *report of the lords of the committee of plantations* will ſhew the ſentiments of the miniſters of England with regard to this inſurrection. — From Car. Pap. p. 249.

" May it pleaſe your majeſty,

In obedience to your majeſty's order of council, of the 4th inſtant, we have heard the complaint of the commiſſioners of the cuſtoms againſt John Culpeper; and, being attended by the lord-proprietaries of Carolina, we are fully ſatisfied that the ſaid John Culpeper hath, by divers ſeditious practices, abetted and encouraged a rebellion in that province; whereby ſeven of the lawful magiſtrates, deputies to the lords proprietaries, were all impriſoned, (the eighth of them only being drawn into that confederacy,) and that the ſaid John Culpeper, by colour and force of that rebellious authority, impriſoned the collector of your majeſty's cuſtoms; and, having ſeized into his own hands the cuſtoms belonging to your majeſty, did, by a proclamation in his own name, declare himſelf the lawful collector, endamaging your majeſty's cuſtoms to a conſiderable value. All which being proved upon oath before us, the ſaid Culpeper acknowledged the facts, and lays himſelf at your majeſty's feet for your gracious pardon. And, in caſe your majeſty ſhall not think fit to extend your mercy towards him, he deſires he may be tried in Carolina, where the fact was committed. But, withal, the commiſſioners of your majeſty's cuſtoms humbly beſeech your majeſty, that no favour may be ſhewed him unleſs he make or procure ſatisfaction for the cuſtoms ſeized and embezzled by him, which we are informed do amount to three thouſand pounds ſterling. All which, &c.

Angleſey, Worceſter, Lauderdale,
Bridgewater, L. Hyde, H. Coventry."

[27] Car. Pap. p. 283. — [28] Mod. Un. Hiſt. 40 v. p. 424-5; Brit. Emp. Am. 1 v. p. 333. — [29] Reports, 349. — [30] 3d Inſtitute, p. 11-113. — [31] Ib.

[31] Ib. p. 11; Hale's Hiſt. Pleas of the Crown, 1 vol. p. 156. — [32] State Trials, 1 vol. p. 181. — [33] Mod. Univer. Hiſt. 40 vol. p. 147-154. — [34] Foſter's Crown-Law, 8vo edit. p. 412. — The following *opinion of the attorney and ſolicitor general of Barbadoes, delivered officially to the governor*, diſplays the ſentiments of *colonial lawyers* during that age on this important point of Engliſh juriſprudence. — From Record, Plantations Gen. C. p. 475.

" We are humbly of opinion, that, as long as the ſtat. 35 Hen. VIII. " ch. 2. continues in force, no perſon whatſoever can be tried in this " iſland for a *foreign treaſon* without a ſpecial commiſſion from her ma- " jeſty for that purpoſe. The ſaid ſtatute poſitively directing that all " foreign treaſons ſhall be tried either in the kingdom of England or " by a ſpecial commiſſion from her majeſty: And *ſuch always has been the* " *expoſition of that ſtatute.*

E. Chilton.
12 Jan. 1703-4. W. Rawlin."

[34] See Bigg's propoſals for ſuppreſſing the revolt. Car. Pap. 224; and the repreſentations of the proprietaries. Ib. 275. — [35] Car. Ent. 1 v. p. 135-7-72-3. — [36] See the addreſs of ſeveral inhabitants to Charles II. praying for protection; and Bigg's letter and depoſition. Car. Pap. p. 267-71. — [37] Car. Ent. 2 v. p. 177-8. — [38] Ib. p. 157-9. — [39] See the proprietaries letter to the governor, council, and inhabitants.

[40] Car. Ent. 1 v. p. 93-120. — The governor's ſalary, during that age, was only 100 l. ſterling a year. Ib. 125-164; Car. Ent. 2 v. p. 42; and Car. Pap. p. 1-20. — [41] Car. Ent. 1 v. p. 130; 2 v. p. 80. — [42] Car. Ent. 1 v. p. 176-9-84; Ib. 2 v. p. 9-15-28. — [43] Ib. p. 36. — [44] Ib. p. 50-4. — [45] Ib. p. 20-4. — [46] Ib. p. 75-9. — [47] Ib. p. 130-5. — [48] Ib. p. 106. — [49] Ib. p. 121. — [50] Ib. p. 82.

[51] The following papers will illuſtrate and ſupport the text, and ſhew the principles and conduct of all parties.

Part of a letter from George Muſchamp, the firſt collector of Charles-Town, dated 11 *April*, 1687, *to the commiſſioners of the cuſtoms.* — From Car. Ent. 2 v. p. 373.

" I have received your letter and inſtructions, which I ſhall endeavour to follow; but fear it will be difficult to maintain the acts of navigation: It being not a week ſince I had a trial with a maſter of a veſſel for that he was navigated with four-fifths Scotchmen; but I own the evidence was not very clear; for which reaſon the court gave it againſt me. However, in effect it was declared, that, if it had been never ſo clear, they would have pleaded the benefit of their charter; pretending that it gives them power to trade with Scotland and Ireland, and likewiſe that the natives have liberty to tranſport their own product in ſhips navigated with Scotchmen; which I am ſure is againſt the law, *which the people believe to be of no force againſt their charter, which was granted after the act was paſſed.*" — REMARK. It hath been ſhewn that Scotchmen might navigate Engliſh ſhips, becauſe they were conſidered in notion of law as natural-born ſubjects: Hence we may infer that Muſchamp's opinion was erroneous.

Report of the attorney-general, to whom this letter was referred. — From Car. Ent. 2 v. p. 375.

" May it pleaſe your lordſhips,

I have peruſed theſe papers, and have alſo conſidered the ſeveral ſtatutes of 12 Cha. II. ch. 18. of 15 Cha. II. ch. 7. of 22-3 Cha. II. ch. 26. And it is moſt clear, that what, by Mr. Muſchamp's letter is held at Carolina to be a lawful trade, is moſt directly contrary to theſe acts of parliament; and, though their charter be ſubſequent to theſe ſtatutes, by which he ſays they juſtify, yet is there no colour for their opinion, *unleſs within their charter there be alſo a power granted them to trade contrary to theſe laws, with expreſs non-obſtantes to the ſame:* The charter therefore ought to be inſpected; and, if it contains ſuch licence and ſuch non-obſtantes, (as I am apt to believe it doth not,) then there may a queſtion ariſe, how far it will be valid againſt theſe acts of parliament; wherein if

if it ſhall appear to be the caſe, I ſhall be ready to give my opinion, if your lordſhips ſhall deſire it.

T. POWIS."

Extract of a letter from the proprietaries, to whom theſe papers were ſent, to the committee of plantations. — From Car. Ent. 2 v. p. 381.

" In obedience to your lordſhips commands, we have conſidered Muſchamp's complaints, that the people in Carolina pretend a right to trade with Scotland and Ireland, contrary to the acts of navigation; which we humbly conceive muſt be the diſcourſe of ignorant and looſe people only, and not of any concerned in the government: For that we have conſtantly commanded the governor and council ſtrictly to obſerve the ſeveral acts of trade, which we took care to ſend thither: And, in our letter of 10 September, 1685, we did again remind them of their duty therein, and as ſoon as we were acquainted that Mr. Muſchamp was appointed to be *collector of the plantation-duties in Carolina*, we did (as in duty bound) enjoin the governor to be aſſiſting him; ſo that we do no ways doubt, but that the ſhip ſeized by Mr. Muſchamp would have been condemned if there had been ſufficient proof: *We never claiming or pretending, by our charter, any exemption from ſaid acts.* Nor do we know what encouragement any ſhip from Scotland or Ireland can have to trade to the ſouth parts of Carolina, the inhabitants having hardly overcome the want of victuals, and not as yet any commodity fit for the markets of Europe, but a few ſkins and a little cedar; both of which do not amount yearly to £ 2000."

A letter from Lord Shafteſbury to Lord Craven, the palatine, with regard to the quo-warranto, the ſurrender of the charter, the reimburſement of the expences of the ſettlement. — From Car. Ent. 2 v. p. 369.

" My lord, St. Giles's, 7 July, 1686.

I received yours; but, not knowing upon what grounds the quo-warranto was intended to be brought againſt our patent for Carolina, am able to give no reſult upon it. There have been conſiderable ſums of money diſburſed by the proprietaries to bring it to this effect; and, when

when the patent is ſurrendered, I cannot ſee any way by which they will in probability be reimburſed. I ſhall be as unwilling to diſpute his majeſty's pleaſure as any man; but, this being a public concern, it is not in any particular man's power to diſpoſe of it. Therefore, whatever ſhall be approved of by the reſt of the proprietaries, or the majority of them, to be done in this affair, I ſhall acquieſce in.

SHAFTESBURY."

[51] Car. Ent. 2 v. p. 87-103-207. — [53] Brit. Emp. Am. 1 v. p. 345. — [54] Ib. 341; ſee their ſingular proteſt, in old Car. Ent. N°. 2. — One of the proteſting members ſigned his mark, as he could not write: We may thence form an opinion of the extent of his political knowledge. — [55] Car. Ent. 2 v. p. 167-8-71. — [56] Ib. p. 175. — [57] The governor, among other irregularities ſo common during thoſe times, fined a miniſter 100 l. and impriſoned him till payment, *for preaching a ſeditious ſermon*: But the proprietaries remitted the fine, becauſe they deemed it extravagant. Ib. p. 160. — [58] Ib. p. 165-6. — [59] Ib. p. 177-8. — [60] Ib. 194. — [61] Ib. 213. — [62] Ib. 215.

CHAP.

CHAP. XIX.

The voyages of Hudſon. — A commerce eſtabliſhed by the Dutch on the river Mana-hatan. — Weſt-India company formed. — The ſettlement; — diſputes; — and extinction; — of New-Netherlands. — Conquered by the Engliſh; — and called New-York. — The adminiſtration of Nichols; — of Lovelace. — Retaken by the Dutch. — Reſtored. — Adminiſtration of Andros. — Diſcontents. — Government of Dongan. — Firſt aſſembly convened. — Sketch of the hiſtory of the Five Nations. — Commencement of the Indian trade. — The province devolves on the crown. — Dongan's commiſſion renewed. — A tyranny re-eſtabliſhed. — Indian affairs. — Treaty of neutrality. — Its conſequences. — Dongan recalled. — Province annexed to New-England. — Diſcontents ariſe. — The fort ſeized by the populace; — who are headed by Leiſler. — A convention called. — William and Mary proclaimed. — Leiſler's adminiſtration. — Sloughter appointed governor. — Aſſumes the government. — Seizes Leiſler; — who is tried for treaſon; — and is executed. — His attainder reverſed by act of parliament.

THE vanity of individuals, and the pride of nations, prompt them equally to deduce the origin of their progenitors from the remoteſt antiquity, in order to conceal the meanneſs of their original in the obſcurity of diſtant ages. Influenced by ſuch ſentiments, hiſtorians have formally contended whether the renowned Hudſon made his firſt voyage to the New-World in the year 1608 or in 1609; diſregarding that ſatisfactory evidence which could alone decide a controverſy ſo extremely intereſting. He departed from the Texel aſſuredly in the beginning of the year 1609, with deſign to penetrate to the Eaſt-Indies by ſailing north-weſtward, though his journals do not inform us, whether he was ſent out by the Eaſt-India company of Holland, or by individuals. Having attempted to execute the object of his voyage to no purpoſe, he followed the track which the Cabots had marked for him nearly two centuries before. He coaſted along the foggy ſhores of Newfoundland; he

ſhaped

ſhaped his courſe for Cape-Cod; he looked into Cheſapeake, *where the Engliſh were ſettled*; he anchored off the Delaware; and he ſailed into the river *Mana-hatan*. Here he admired the beauty of the country and the ſtatelineſs of the trees; he ſkirmiſhed with the natives, who received him unkindly; and he departed in October for England. But he did not land without oppoſition; he did not, like Cabot, take formal poſſeſſion of what the aborigines had enjoyed from a period beyond calculation. He lived not, alas! to return thither; becauſe, having ſailed from the Thames in the beginning of the ſubſequent year, in order to make ſimilar diſcoveries for private adventurers, he periſhed miſerably in the icy ſeas of Greenland. His countrymen long regretted the fate of a man, whoſe abilities and atchievements did honour even to the nation which had produced ſo many illuſtrious navigators. What intereſt he could acquire from his American diſcovery, or what right he could tranſfer to others, it is not eaſy to divine, though hiſtorians have told us, "that he ſold his title to the Dutch." He can ſcarcely be called *the firſt diſcoverer* of a coaſt which had been ſo often explored before, from the days of Cabot to the preſent. As he had never occupied the land, he could not transfer what he had never poſſeſſed. The ſovereign of France, during the year 1603, and the king of England, in 1606, had formally declared their intention to appropriate the ſame region, which their ſubjects immediately planted. And, whether the ſtates of Holland had, at the death of Hudſon, been admitted into the community of nations by the acknowledgement of their independence, or whether they were then capable of deriving rights from the law of nations, are ſubjects which might have been once extremely proper for a Dutch civilian to diſcuſs.[1]

While they yet ſtruggled for exiſtence, the Hollanders grew wealthy from the ſpirit of their commercial enterpriſes. After ſeveral voyages to the river Mana-hatan, which at length acquired the honour of Hudſon's name, they had built a *trading-houſe*, near its confluence, as early as 1614. For here they were then diſcovered by Argal, as he returned from the deſtruction of Port-royal; who obliged them "to ſubmit to the king of "England, and to the governor of Virginia under him."[2] The Dutch yielded to their fate without complaint, becauſe they had yet ſcarcely acquired

quired independence; becauſe they had been extremely indebted to James I. and yet ſtood in need of his aid. But, though they did not reſent the conduct of Argal, as an outrage offered to their ſovereignty, ſince they really claimed none, they continued a gainful commerce to the Engliſh colonies, and to every part of North-America, till the acts of navigation prevented what they were unable to enforce. And from this circumſtance, therefore, they could derive none of the rights of dominion, any more than they could form claims on England, becauſe they trafficked in her ports.

The month of June, 1620, is the epoch of the eſtabliſhment of the famous *Weſt-India* company of Holland. It was inveſted, for the firſt time, with an excluſive trade to the weſtern coaſt of Africa, to the eaſtern ſhores of America, from Newfoundland to the Streights of Magellan. It was empowered to make treaties with the princes of the land; to build fortreſſes for the protection of commerce, appointing officers and ſoldiers for their defence; and to nominate magiſtrates for the preſervation "of good government." Such is the ſubſtance of this ſignal edict,[3] which neither claims the ſovereignty of any part of thoſe mighty continents, nor mentions *New-Netherlands*, nor even alludes to any prior colony. We may therefore ſafely conclude, that neither any plantation, nor the name of New-Netherlands, at that time had any exiſtence. But, while hiſtorians have overlooked an ordinance which contains ſo many uſeful notices, they aſſure us, with confidence, "that the ſtates-"general made a grant of the country, in 1621, to the Weſt-India-"Company," that had been thus eſtabliſhed the year before, and had been thus inveſted with ſufficient power to trade and to govern. Though this charter has been often mentioned by writers, and relied on by governors, they have neither given it to the world, nor informed their readers where it may be peruſed.[4] And there are reaſons, moreover, to infer, that they have uniformly confounded what may have happened in 1621 with what actually occurred in June, 1620. But, were we to admit as a fact what ſeems ſo extremely queſtionable, what right could the ſtates-general acquire to a region which had been firſt diſcovered and firſt occupied by others? They could not grant, in 1621, what had

been given to the Plymouth-Company, by the king of England, the year before. The law of nations never confers an intereſt in oppoſition to firſt poſſeſſion, becauſe the preſervation of their repoſe is its firſt object.

Animated, however, by the favour of the ſtates, the Weſt-India-Company eſtabliſhed, about that time, trading-houſes in the iſland of Manhattans, at the confluence of the Hudſon, which gave riſe to New-York; and at the diſtance of one hundred and fifty miles towards its ſource, which laid the foundation of Albany. The Dutch factors naturally cultivated a commerce with their neighbours at New-Plymouth, to whom they ſent their ſecretary Roſier, in February, 1626-7. Both parties were pleaſed with a mutual intercourſe, becauſe the intereſts of both were promoted. He brought with him peltry and other Indian commodities, which he exchanged for *their corn and fiſh.*[5] And, from theſe trivial notices we may infer, that no plantations had yet been eſtabliſhed; becauſe they muſt have produced what was now ſought for with avidity, as eſſential to the exiſtence of man in every ſituation. Reſolved at length to eſtabliſh a colony, the Hollanders appointed Van Twiller governor, who arrived at *Fort-Amſterdam* in June, 1629, who began to grant lands in the ſubſequent year. And at this time commenced the firſt permanent ſettlement of the Dutch, which now probably acquired the name of *New Netherlands*, though this people, like the French and Engliſh, were never able to aſſign to them any ſpecific boundaries. Yet, as this province was not much attended to by the ſtates, becauſe they were more intereſted in other objects; and rather neglected by the company, which then engaged with ardour in other enterpriſes; it increaſed but ſlowly in populouſneſs and power. It contended with New-Plymouth, in 1633, for the firſt poſſeſſion of the river Connecticut, though without ſucceſs, becauſe its oppoſition was feeble:[6] It not long after erected a trading-houſe on the eaſtern bank of the Delaware; in order, probably, to eſtabliſh the two rivers as the extreme limits of New-Netherlands. And, though the Dutch exerted their uſual patience and induſtry, though they cultivated the good-will of the ſurrounding tribes, which inſured them a long peace, they continued extremely inconſiderable during the adminiſtration of their firſt governor. For no civilized

ſociety

ſociety can have exiſted long which enjoys no written memorials of its affairs, and there "remain not here any records relating to ſtate-matters "before the arrival of his ſucceſſor."[7] The traditions of no country merit much regard, but thoſe of ſuch a people are worthy of none.

Kieft, who was appointed governor in the year 1637, found that his ſtation required what he ſeems to have really poſſeſſed, great vigour and addreſs. For the people of New-England began now to emigrate to the river Connecticut, where they ſettled, notwithſtanding his remonſtrances and his threats; which are generally derided, becauſe they are often impotent. New-Haven was planted, during the year 1638, ſtill nearer to the ſeat of his government, in oppoſition to his proteſt, which was deſpiſed, becauſe it was unſupported.[8] In June, 1639, Forreſt, the agent of Earl Stirling, transferred a conſiderable part of the eaſtern extremity of Long-iſland to Howel and his aſſociates, with ſuch powers of government as had been communicated to that nobleman by the Plymouth-company:[9] And, encouraged by a title ſo extremely ſpecious, perhaps juſt, the inhabitants of Connecticut, having overſpread the eaſtern end of that iſland, advanced weſtward to Oyſter-bay. But they were driven back by Kieft, during the year 1642, becauſe they now appeared within ſight of the place of his reſidence. And, as they were not a people patient of injury, they inſtantly ſeized the Dutch garriſon of Fort-Hope, on the river Connecticut, in the vicinity of Hartford, obliging them to recede within ten miles of the Hudſon, which was afterwards confirmed by treaty.[10] Theſe notices demonſtrate not only the extreme feebleneſs of New-Netherlands, but the ſenſe which their rulers entertained of the validity of a title ſpecious, but invalid. For, happily for the world, men ſeldom exert themſelves in ſupport of what they feel to be unjuſt.

About the time that the people of New-England advanced to Connecticut, the Swedes eſtabliſhed a *trading-houſe* on the eaſtern bank of the Delaware, which gave riſe to the village of Elſingburgh, at no great diſtance from the Ocean. Conſidering them as intruders on another's territory, Kieft remonſtrated againſt their conduct in May, 1638; aſſerting, with a confidence which ſhews the ſincerity of his own belief, "that "the Dutch had been in poſſeſſion of the ſouth river many years, which

" had been unhappily ſealed with their blood." The pretenſions of both, however, were equally faulty; becauſe both were advanced contrary to the declaration of the law of nations in favour of firſt diſcovery and prior poſſeſſion. As neither was convinced by the reaſons nor terrified by the power of the other, both continued their occupancy and purſued their inconſiderable traffic with the natives. And, as diſputes naturally aroſe between ſuch rivals, either with regard to extent of territory or commerce, a bloodleſs war enſued. The Dutch dictated the terms of peace. The Swediſh coloniſts became the ſubjects of the ſtates-general, in September, 1655, by capitulation; " thirty Swedes taking the oath of fideli-" ty, a few others retiring to Sweden." But, though the Hollanders had thus acquired ſole poſſeſſion of what they called New-Netherlands, they did not enjoy their good fortune in tranquillity. They were continually preſſed on all ſides by thoſe who conſidered them as equally intruders; becauſe their opponents did not admit the equity of their title. The people of New-England advanced upon them with haſty ſteps from the eaſt: On the ſouth-weſt Lord Baltimore juſtly claimed the territory ſtretching to the fortieth degree of latitude, *where New-England is terminated.* And theſe expreſſions alone ſhew how much Engliſh ſtateſmen diſregarded the Dutch poſſeſſion or claims; becauſe, when the charter of Maryland was granted, in 1632, they ſuppoſed them not to exiſt. Stuyveſant, the ſucceeding governor, repreſented pathetically to the ſtates the deſperate ſituation of New-Netherlands, from the cauſes before-mentioned; ſtating what concern the demands, encroachments, and uſurpations, of the Engliſh gave the people." Their hiſtory contains nothing but their ſettlement, their conſtant turmoils, their extinction. And it ought to teach a leſſon to nations and to men, how they admit others to invade their rights, becauſe continued poſſeſſion at length forms a title, ſpecious if not juſt.

The averſion and even perſonal antipathy of Charles II. to the Dutch, influenced his political conduct towards them during his reign, becauſe theſe paſſions were unbounded.[12] Seeing him actuated by his diſlikes, the intereſted incited him, ſoon after his reſtoration, to acquire poſſeſſion of New-Netherlands, which, they informed him, had been formerly

uſurped

uſurped by the people whom he hated and deſpiſed. And, while he was diſtributing American territory with his accuſtomed profuſion, it had been ſtrange had he refuſed his bounty to a brother whom he loved. Reſolved upon the conqueſt of the Dutch colony, he granted to the duke of York, in March, 1664, the region extending from the weſtern banks of Connecticut to the eaſtern ſhore of the Delaware, together with Long-iſland; conferring the powers of government, civil and military:[13] And conſidering neither the plantations of Connecticut nor of Holland to exiſt. Colonel Nichols, who had learned, with the prince, the rudiments of war under Turenne, was however immediately diſpatched with four frigates, carrying three hundred ſoldiers on-board, for the reduction of New-Netherlands: Relying on the promiſed aid of New-England.

After a diſaſtrous voyage, during which the fleet was ſeparated, it at length arrived at Boſton, where the commanders were received with extreme caution. Nichols immediately communicated his inſtructions to the general-court, which received them with more than uſual attention, becauſe it was influenced by its dread of expected reformation. Without much heſitation, it therefore reſolved; "to raiſe a number of men for "his majeſty's ſervice, not exceeding two hundred:" But, though actually embodied, they did not ſhare the honour of the conqueſt of New-Netherlands, becauſe they did not join the armament.[14] Little was the Dutch governor prepared for an attack, though he had long known of the intention of the court of England. And the frigates no ſooner anchored in the harbour than he ſent a meſſage to the commander, couched in the affected terms of civility, which the weak know how to uſe on ſuch occaſions, to requeſt the reaſon of their approach. While Nichols did not yield to him in that politeneſs which ſoftens the rigour of war, he aſſerted the right of the king, his maſter, to New-Netherlands, which he inſiſted had been uſurped by the Dutch, and he demanded an inſtant ſurrender of the country; offering ſecurity to every man's life, eſtate, and liberty, who ſhould ſubmit to his power. Stuyveſant found it more eaſy to defend the right of his maſters, the ſtates-general, to that country, by giving an hiſtorical account of the colony, in which ſome fable is agreeably blended, than to reſiſt the force of his opponent: And, proteſting

teſting againſt all hoſtility, he endeavoured to gain time by offering to treat. But the Engliſh commander having, in the mean time, publiſhed a proclamation, offering to the inhabitants the king's protection, the enjoyment of their property, the privileges of ſubjects, the governor was conſtrained to capitulate; becauſe it was impoſſible to reſiſt his public enemies from without, and the clamour of the burghers within. The proclamation was made the baſis of the treaty: The Dutch were *to continue free denizens*; to poſſeſs their eſtates undiminiſhed; to enjoy their ancient cuſtoms with regard to inheritances, to their modes of worſhip, and church diſcipline: And they were allowed a freedom of trade to Holland, which Nichols had no power to confer, becauſe a king of England could not diſpenſe with the laws, by permitting a commerce which they had prohibited. The dependencies ſoon followed the fate of New-Amſterdam, the capital. Thus, in September, 1664, ſubmitted New-Netherlands to the Engliſh crown, without a ſtruggle, or without any other change than only of their rulers. The conqueſt conferred rather celebrity on the prudence of the commander than added any thing to his military reputation. Few of the Dutch removed from a country where they had acquired ſome property, and hoped for greater: And here remained Stuyveſant, who had long governed the country, during difficult times, with conſiderable abilities and valour; and, in a good old age, breathed his laſt amid the tears of his countrymen; becauſe his good offices did not ceaſe long after he had ceaſed to rule the whole! [15]

Of the country which his prudence and vigour had won, which was now denominated New-York, Nichols inſtantly aſſumed the government, as deputy-governor of the duke of York, the proprietary. If we except Jamaica, this is the firſt colony which had been gained by the valour of Engliſhmen: And now their ſovereign acquired all the rights of a conqueror, bounded only by the principles of humanity, and by the terms of the capitulation; becauſe, being the *generaliſſimo* of the ſtate, he muſt be inveſted with the neceſſary powers of the ſupreme commander, for the preſervation of his conqueſts. Hence the well-known principle of the law of England, "that, where a country is conquered by the Engliſh "arms, the king may exerciſe over it a legiſlative authority, and may "eſtabliſh

" eſtabliſh ſuch a conſtitution as he may think prudent."[16] The duke of York, animated by his peculiar principles, and impreſſed with an opinion that he was inveſted by his patent with regal authority, had conferred all his powers on his deputy. Judging wiſely that nothing could ſo much enſure his conqueſt as giving to the various inhabitants the ſame uniform conſtitution and laws, Nichols now " put the whole govern-" ment into one frame and policy." Prudently copying what had been already eſtabliſhed by the Dutch, he erected a court of aſſizes, compoſed of the governor, the council, the juſtices of the peace; which was inveſted with every power in the colony, legiſlative, executive, and judicial.[17] He found the town compoſed of a few miſerable houſes, occupied by men who were extremely poor, and the whole in " a mean con-" dition.;"[18] but he foretold its greatneſs ſhould it be encouraged with the immunities which he then recommended. The people of Long-Iſland were equally inconſiderable, and depreſſed with ſimilar penury, becauſe the exertions of their labour had only procured them neceſſary food and clothing. And the Dutch had only begun to raiſe a little corn and a few cattle, which were now the only products, and gave little ſpirit to a commerce which had long been ſolely confined to peltry procured of the Indians. With a laudable intention, he endeavoured to promote the proſperity of the whole, by giving a ſpring to their ardour: He encouraged the inhabitants to buy lands of the natives, which he afterwards granted, reſerving a quit-rent of a penny an acre: And he allowed what was of ſtill greater importance, freedom of conſcience to every one. Yet, owing to the firſt Dutch war, which ſoon enſued, and to other cauſes, the populouſneſs or power of the province remained for years extremely inconſiderable, becauſe a few Hollanders only, attracted by their kinſmen, emigrated thither: And Engliſhmen, influenced probably by the diſlikes of their ſovereign, reſorted to Engliſh colonies.[19] Not only had New-Netherlands been granted to the duke of York, but one half of Connecticut; which gave riſe to one of thoſe diſputes that can only be ſettled by amicable treaty, becauſe no acknowledged principles exiſted that were applicable to the pretenſions of both. This colony accordingly ſent commiſſioners to New-York, in December, 1664, to decide

cide a diſpute which ſo much involved the peace of both. Long-Iſland was reſigned to the duke of York; the river Mamaroneck, reputed thirteen miles eaſt of Weſt Cheſter, and a line drawn from it, north-north-weſt to the boundary of Maſſachuſets, were declared to be the eaſtern limits of New York. Thus the people of New England had driven the Dutch from the river Connecticut almoſt to the Hudſon, to within thirty miles of their capital. But a treaty which was founded, as we are aſſured, in ignorance and fraud, only engendered future controverſy:[20] And Connecticut was convinced in after times, that fair dealing is not only the moſt honourable, but always the moſt ſafe.

As the war was now commenced, Nichols laboured with his uſual energy to put his conqueſt in the beſt poſture of defence. He augmented the number of his ſoldiers, and conſequently an expence, which the poverty of the whole was little able to ſupport. And while the people were taxed, and the ſoldiers were quartered on the burghers, who were not enabled to pay in proportion as their burthens were encreaſed, as they were deſtitute of ſhipping, their trade was totally loſt. And as they received no ſupplies from England, a general calamity enſued. In this extremity, the governor, with a ſpirit worthy of imitation, advanced his own money, and extended his credit to ſupply the public exigences. But happily the Weſt India company of Holland did not put in execution its threats, by attempting now to regain what its former imbecillity had loſt. During theſe embarraſſments, the vicinity of Albany was ſomewhat diſturbed by the inroads of the *five nations* of Indians, who in the height of their bloody diſputes with Canada, were ſometimes regardleſs of their friends. Though the Dutch have not been equally boaſtful of their own virtues, they have been aſſuredly more ſucceſsful than the French, in conciliating the affection of the tribes. From their ſettlement on the Hudſon, to the preſent time, a continued peace exiſted between them, and that renowned confederacy: Nor is it worthy of inquiry, whether this remarkable circumſtance was owing to their ſuperior addreſs, or to their peculiar ſituation, which gave them an opportunity of ſupplying the latter with warlike ſtores during their long wars with the former. It was to the ancient influence of the Dutch that the province was now indebted for the

the peace, which was concluded with the moſt formidable of all the nations. While Nichols, in Auguſt, 1666, endeavoured to cultivate a good agreement with Tracy, governor of Canada, he warned him, by no means to invade the dominions of his ſovereign.[11]

Amid his prudent military precautions for the defence of the province, he endeavoured to promote its internal proſperity and quiet by legiſlative regulations. The court of aſſizes in June, 1665, collected into one code the ancient cuſtoms, with ſuch additional improvements as ſo great a change required, regarding the laws of England, as the ſupreme rule: And being tranſmitted for that approbation, without which they acquired little authority, theſe ordinances were confirmed by the duke of York in the ſubſequent year. In order to diſcharge the public expences, the ſame authority impoſed a general rate on the eſtates of the inhabitants without their conſent, becauſe they were deemed a conquered people. The city of New-York, which had formerly enjoyed extenſive privileges under its ancient government, was now incorporated, and placed under the adminiſtration of a mayor, aldermen, and ſheriff.[12] The ſettlement of Long-Iſland, ſo remarkable for beauty of ſituation and for the fruitfulneſs of its plains, had been nearly co-eval with the exiſtence of New-Netherlands and Connecticut. The Dutch ſoon occupied its weſtern extremity; from the latter, emigrants paſſed the Sound and occupied the oppoſite ſhores: And now the Hollanders enjoyed one third, and the Engliſh the other two. Diſputes naturally aroſe between men ſo diſſimilar in all things. And the good ſenſe of Nichols induced him to call together two deputies from every townſhip, in order to ſettle late controverſies, to prevent future ones. They took this opportunity to tranſmit an addreſs to the duke of York;[13] acknowledging their dependence on him, *according to his patent*; promiſing to ſubmit cheerfully to ſuch laws as ſhall be made, under his authority, to defend his rights; requeſting that their declaration might be accepted as a memorial againſt them and their heirs, when they ſhould fail in duty. It has been ſuppoſed by ſome, but denied with reaſon by others, that the moſt ancient code of laws of New-York was enacted at this general meeting at Hampſtead; in order to evince that an aſſembly was thus early introduced

into the juriſprudence of that province. But, while there is the moſt deciſive evidence that the code was compiled at the aſſizes before-mentioned, there is none that any laws were enacted by this convention, compoſed of deputies from Long-Iſland alone, who could form no legiſlative regulations for the whole: And hiſtory declares, that they were called for the ſpecial purpoſe of ſettling the boundaries of townſhips, though that probably was made the pretence, whilſt the real deſign of Nichols was to procure a declaration of ſubmiſſion to his maſter. The difficulty ſeems to have ariſen from denominating *the court of aſſizes*, during thoſe days, *the aſſembly*, though the people were not repreſented in it. Pleaſed with the ſituation of ſecurity and of quiet, to which he had brought the province, the governor flattered himſelf, though perhaps without cauſe, "that now even the moſt factious republicans muſt acknowledge themſelves fully ſatisfied with the method and way they are in."[24] Yet he himſelf became at length uneaſy in his ſituation, becauſe he felt the pecuniary burdens of the war too heavy, and he begged that a better man might be appointed to ſupply his place. He retired in the beginning of the year 1667. While he governed the inhabitants as a conquered people, he paid attention even to their prejudices; they loved the man whoſe orders they diſliked:[25] And it is recorded to his honour, that he exerciſed his extraordinary powers with moderation and integrity.[26] His conduct was approved by his ſovereign, who rewarded the conqueror and ſaviour of a province with *two hundred pounds*. Yet, on a gratuity, which he knew ought not to be eſtimated by its extent, he ſet a proper value, becauſe it had been conferred *when it could be leaſt ſpared*, and he betrayed no diſcontent, becauſe true merit is always modeſt.[27] By the peace of Breda, concluded in July, 1667, New Netherlands remained in poſſeſſion of the conquerors, by virtue of the general clauſe, "that each "nation ſhall retain what it had acquired in the war." In this ſtipulation, the politicians of thoſe days regretted the loſs of Surinam with a zeal which ſhews how little preſent impreſſions ought to influence the judgement in political calculations.

Lovelace aſſumed the adminiſtration in May, 1667. And with a ſpirit, which does honour to his prudence, he followed the excellent track which had

had been marked by his predeceſſor. The people, committed to his charge, enjoyed all the felicity which flows from that deſirable ſituation, in which no complaints are heard, becauſe none exiſt. But he was unfortunate: He loſt the province, which he had not power to protect: And his eſtate was afterwards ſeized, to repay a debt to his maſter, whom he had offended, perhaps without cauſe. Soon after the commencement of the ſecond Dutch war, begun without neceſſity, and ended without glory, a ſmall ſquadron was ſent from Holland, under the conduct of Binkes and Evertzen, to deſtroy the commerce of the colonies. This ſervice they effectually performed on the Virginian coaſt. And having here procured intelligence of the defenceleſs ſtate of New-York, of the neglectful abſence of Lovelace, they ſeized the opportunity to regain now what had been formerly loſt. Knowing how advantageous in war are ſudden impreſſions, they ſailed up to the fort, which ſurrendered in July, 1673, in a manner which ſhews either the remiſſneſs or treachery of Manning, the commander. The city inſtantly followed its example, by ſubmitting at diſcretion. Neither the facility of the preſent conqueſt, nor that nine years before, conferred any additional military honour on thoſe who atchieved them. But, at both periods, they acquired the praiſe which is due to humanity in war, to attention to the conquered. The Dutch admirals, imitating the moderation of Nichols, rather than the accuſtomed rigour of the ſucceſsful, granted the inhabitants the full enjoyment of their privileges. They offered the ſame flattering terms to the other diſtricts of the province, on condition of ſending deputies to ſwear allegiance to their maſters. Actuated partly by their inclination, but more by their fears, the inhabitants of the whole extent of New-Netherlands ſubmitted to their fate. But neither the triumph of the one party, nor the mortification of the other, was of long continuance. The peace of London, concluded in February, 1674, prudently provided, "that "whatſoever may have been taken, during the war, ſhall be reſtored to "the former poſſeſſor." [28]

As the validity of the grant to the duke of York, while the Dutch were in quiet poſſeſſion of the country, had been very juſtly queſtioned, he thought it prudent to obtain a new one in June, 1674. [29] It recited

and confirmed the former: It empowered him to govern the inhabitants "by ſuch ordinances, as he or his aſſigns ſhould eſtabliſh;" to adminiſter juſtice according to the laws of England, allowing an appeal to the king in council: It prohibited trade thither without his permiſſion: And though it allowed the provincials to import merchandiſes, yet it required them "to pay cuſtoms according to the laws of the realm." Such is the ſubſtance of a charter, under the authority of which he ruled New-York till his acceſſion to the throne. But it is unneceſſary to point out the defects of what could not have been defended by fair diſcuſſion, and it ſoon became extinguiſhed by the event juſt mentioned. Edmund Andros, whoſe talents now recommended him to notice, whoſe ſubſequent conduct rendered him ſo conſpicuous in colonial annals during twenty years, was ſoon after appointed governor. He was ordered to diſturb no man's eſtate, while he received poſſeſſion of the country from the Dutch; to diſtribute juſtice in the king's name, as had been practiſed under the government of his two predeceſſors. In order to maintain the government which was now eſtabliſhed, a great variety of rates were at the ſame time impoſed by the ſole authority of the duke of York, who, in order to encourage the trade of his province, reduced the cuſtoms ſix in the hundred. And of theſe duties Dyer was appointed collector, who was not long after arraigned as a traitor, becauſe he acted under the authority of a commiſſion, which was now ſolicited with avidity, becauſe its authority was diſputed by none.[28]

To Andros the Dutch reſigned their authority in October, 1674. He immediately received the ſubmiſſion of the inhabitants as far weſtward as the Delaware. And he ſoon after "reduced the eaſt end of Long-"Iſland, and ſome other turbulent places." In order, however, "to ſettle "the minds of the inhabitants," the governor thought it prudent to declare in the ſubſequent month: That former privileges and eſtates, legally poſſeſſed prior to the late conqueſt, ſhould remain ſacred; that the judicial proceedings during the Dutch government ſhould continue in force; that the *known book of laws* formerly eſtabliſhed, being once more confirmed, ſhould be again punctually obeyed.[29] Thus was New-York happily regained: And thus were its inhabitants again enſlaved to the will of the conqueror,

conqueror, becauſe, being admitted to no ſhare in the legiſlature, they were ſubjected to laws, to which they had never aſſented. Manning, through whoſe neglect or treachery the province had been loſt, becauſe the fate of nations often depends on the conduct of one man, was now degraded from the rank of a ſoldier, by the ſentence of a court martial, and juſtly declared incapable of future truſt. Andros endeavoured, during May, 1675, to little purpoſe, to acquire the country lying to the weſtward of Connecticut river, which had been conferred on the duke of York, though it had been poſſeſſed from 1637, and confirmed by the king in 1662. The general court, with the ſpirit of men who underſtood their rights, and determined to defend them, proteſted againſt his conduct in terms which convinced him how neceſſary it was to act with caution. The adviſers of the duke of York approved of reviving the claim on Connecticut, becauſe "thereafter ſome good uſe might be made of it:" And it long diſturbed the peace of the two colonies, becauſe it was conſtantly revived without neceſſity or uſe. His conduct was highly approved of by that prince, "who rejoiced that he had reduced the factious towns on "Long-iſland;" who informed him, in language which at once evinces his own temper and the inclinations of the people, "that he had done "well to diſcourage any mention of aſſemblies, of which the inhabi-"tants are deſirous, as they are neither in your inſtructions nor conſiſtent "with your form of government." Yet Andros, with an attachment to the cauſe of the people of which he has been ſuppoſed, by hiſtorians, incapable, ſolicited the duke of York for an aſſembly; which was ſteadily refuſed, becauſe he foreſaw danger from its encroachments, and could not perceive its utility.[30] The governor uſed the permiſſion which had been given him, and he haſtened to England in November, 1677: Leaving the province in profound peace under the care of the deputy-governor.

Though the people felt no real oppreſſion under a form of government altogether arbitrary, yet they enjoyed no happineſs, becauſe their deſires had been denied, and they envied the ſuperior enjoyments of their neighbours. The orders which Andros brought with him from England, in the ſubſequent year, contributed to augment an indiſpoſition which at length became incurable. As the revenue, which had been impoſed for three

three years by the duke of York's inſtructions to the governor, was now about to ceaſe, this prince commanded, in the genuine language of deſpotiſm, to publiſh his pleaſure, " that the ſame duties ſhould conti-" nue three years longer:" And the tax on the importation of liquors was increaſed, by a ſimilar order, in the year 1679." The public indignation was directed againſt Andros, who executed only what another commanded; which ought to teach a leſſon to men, in ſimilar ſituations, how they fulfil what it is neither ſafe to give nor to receive. He was recalled in the beginning of the year 1680, in order to anſwer complaints which originated in the unhappineſs of the people rather than in his miſconduct. Yet, as might have been expected, he was honourably acquitted upon a full hearing, becauſe " it was not proved that he had " either miſbehaved or broken his truſt."[32] From the accuſations and the proofs, it appears, that his chief, his only, crime, conſiſted in having acted under a conſtitution tyrannous and illegal. It has been the lot of Andros, as well as of others, that every thing has been ſaid againſt him, but nothing in his favour; becauſe writers, diſregarding the forms of the government and ignorant of his inſtructions, attributed all to the temper of the man. It has been hitherto unknown, but ought no longer to be concealed, that *humanity* and *gentleneſs* were recommended to him[33] as the greateſt of virtues in the ruler of a diſtant territory. Being thus diſappointed in their expected relief, the people turned their reſentment againſt a perſon of leſs conſequence and of leſs power. Dyer had regularly collected the public revenue, without oppoſition, to the preſent time: But, as the legality of the duties lately impoſed was now juſtly queſtioned, he was accuſed of high-treaſon, becauſe he collected taxes without the authority of law. A ſpecial court was appointed for his trial in the beginning of the year 1681. The priſoner, however, demanded to know by what power the judges ſat; whether they did not act under an authority derived from the ſame prince with whoſe commiſſion he was honoured? The court thought it prudent, " during the pre-" ſent diſorders," to ſend him, with his accuſer, to England for trial. Nothing could be more irregular, and conſequently more oppreſſive, than the whole of this proceeding. Dyer was not indicted for an offence againſt

againſt the *ſtatute of treaſons*, that admirable barrier againſt oppreſſion, but for the ancient and exploded crime of *encroaching power*, by collecting taxes without legal authority. He might have ſafely admitted the truth of the facts charged againſt him; denying the inference, that they amounted to treaſon: He might have appealed to the king in council, had the judges given their opinion againſt him. But the mode, which was then purſued, ſhews how little the principal perſons of that province were informed of Engliſh law. He was diſcharged, as his proſecutor did not appear againſt him, ſince the end of the proſecution was anſwered.[34] This ſpirited meaſure, however irregular it may now appear, had the greateſt effect in laying in ruins that ſyſtem of deſpotiſm which had ſo long afflicted the people."[35]

In order to be relieved from a ſervitude that had degraded the colony, and now gave diſſatisfaction to every one, the council, the court of aſſizes, the corporation of New-York, concurred in ſoliciting the duke of York "to permit the people to participate in the legiſlative power."[36] But, though their deſires were not immediately granted, they were received with the greateſt attention. And various cauſes induced that prince to gratify the petitioners, notwithſtanding his averſion to popular aſſemblies. The ordinances, which, by his ſole authority, had eſtabliſhed the public revenue, expired at a time when his power to renew them was not only denied within the province, but vigorouſly oppoſed: This conduct was juſtified by the opinion of lawyers of great eminence in England: His own adviſers doubted the ſufficiency of his power: And, above all, the continued adverſity which had ſo long embittered his life, made him regard the rights and feel for the ſufferings of others. Brockoles, the deputy-governor, on whom the adminiſtration devolved upon the departure of Andros, was directed "to keep things quiet at New-"York in the mean time." It was intimated to him, in February, 1682, "that the duke will condeſcend to grant the deſires of the inhabitants, "but on condition that they raiſe money for the ſupport of govern-"ment." And he was deſired "to ſound the principal people, and to "procure a written promiſe." He was ſoon after informed, by the duke himſelf, "that he intended to eſtabliſh the ſame frame of government as the

"other

" other plantations enjoyed, particularly in the chooſing of an aſſembly."[37] Actuated by all theſe motives, Dongan, who, as we are aſſured, " was a " man of integrity, moderation, and genteel manners, though a profeſſed " Papiſt," was appointed by him governor in September, 1682. In addition to former powers, he was inſtructed to call an aſſembly, which ſhould conſiſt of a council, conſiſting of ten; of a houſe of repreſentatives, choſen by the freeholders, of the number of eighteen members. Like all other provincial legiſlatures, it was empowered to make laws for the people, which ſhould be agreeable to the general juriſprudence of the ſtate; which ſhould be of no force, however, without the ratification of the proprietary.[38] Thus, ſays their hiſtorian, " the inhabitants of New-York, " after being ruled almoſt twenty years at the will of the duke's deputies, " were firſt admitted to participate in the legiſlative power."[39] For they had been ſo long ruled as a conquered people, though with humanity, moderation, and wiſdom. Nothing could be more acceptable to them than this intereſting change in their political ſituation; for which they expreſſed their gratitude in terms that equally evinced their late unhappineſs and preſent ſatisfaction.

When Dongan arrived, in Auguſt, 1683, he found the country ſomewhat prepared for his reception and for an agreeable alteration, though ſtill greatly diſcontented, becauſe many of the people ſtill feared for the future. As nothing could tend more to quiet the apprehenſions of every one, he immediately iſſued writs to the ſheriffs to convene the freeholders, for chooſing deputies to repreſent them in the legiſlature. And, when the aſſembly met, it was governed by the ſame motives that had actuated all others upon the like occaſion. It paſſed an act of general naturaliſation, in order to give equal privileges to the various kinds of people who then inhabited a province, which was now, for the firſt time, divided into counties. Together with an act, " declaring the " liberties of the people," there was now paſſed one for " defraying " the requiſite charges of government for a limited time:" Thus performing the promiſe that had been ignobly required as the price of their preſent enjoyments, and improperly given. Being tranſmitted with a few other laws, with regard to internal œconomy, they were all confirmed

firmed by the duke of York in the ſubſequent year.[40] The legiſlature was convened once more in Auguſt, 1684, when it explained the act for defraying the charges of government. And theſe ſeem to have been the only aſſemblies which were ever called prior to the Revolution. Aſhamed of being ſo long ruled as a conquered people, the legiſlature and courts of juſtice of this province equally diſregard all legiſlative regulations made antecedent to that epoch.[41] The aſſembly of 1690 reſolved: That the laws enacted, during the years 1683 and 1684, and the privileges of the people declared by them, are void; becauſe they had not been confirmed or obſerved by the duke of York or the late king: That the ſeveral ordinances, made by the late governors and their councils, are equally invalid; becauſe contrary to the conſtitution of England, to the practice of other plantations. But reſolutions, which were dictated by that vehemence of ſpirit which then agitated the whole, merit little credit; becauſe, in the determinations of party, truth is ſeldom to be found. The edicts of the duke of York and his governors, prior to the year 1683, being eſtabliſhed by the only legiſlative authority which that conquered territory had ever enjoyed, formed really its laws: The conſtitutions of the various colonies being extremely different, and depending on diſſimilar charters and inſtructions, the practice of one province affords no rule with regard to the proceedings of another. And the acts of aſſemblies, wherein ſat the people's repreſentatives, had aſſuredly the force of laws till diſſented to, becauſe they were complete legiſlatures. But, from theſe ſingular reſolves, we may infer, that the inhabitants of New-York claim no peculiar immunities from any authority prior to the Revolution. From this æra they have been deemed Engliſh ſubjects, inhabiting a dependent province of the ſtate: And, having never had a charter, they can, from this ſource, claim no peculiar privileges.

Owing to his temper as well as to his ſituation, Dongan engaged more than any of his predeceſſors in the affairs of the tribes bordering on his province, which had ſo great an influence on its proſperity and peace. When the French ſettled in Canada, during the year 1603, they found the *Five nations*, which, under the names of Mohawks, Oneydoes, Onondagas, Cayugas, and Senekas, had been confederated from the moſt ancient

times, engaged in implacable warfare with the Adirondacks, the moſt powerful tribe in that country. Though, in the wars of ſuch people few ſtriking events occur, in the preſent two ſignal revolutions happened which deſerve to be remembered, becauſe they were attended with important conſequences. The contending parties had been, in their turn, forced to abandon their native land. The former had been already driven from their poſſeſſions around Montreal, to ſeek an aſylum on the ſouth-eaſtern coaſt of the lake Ontario: The latter had been conſtrained, in their turn, to abandon their lands ſituated above the *Three rivers*, and to look for ſafety behind the ſtreight where Quebec was built; becauſe they had too much deſpiſed their enemy till it was too late. Prompted by the warlike ſpirit of his nation, and by his intereſt, Champlain, who conducted the French colony, joined the Adirondacks, becauſe he had ſettled on their lands and expected to promote his views. The tide of ſucceſs inſtantly turned. The conduct, the bravery, but, above all, the fire-arms, of the allies, proved too many for the intrepidity and ſtratagem of the Five nations. And they were, in their turn, defeated in ſeveral battles, and reduced to the greateſt diſtreſs. At this critical juncture arrived the firſt Dutch ſhip in that part of the river Mana-hatan, where Fort-Orange of the Hollanders, the Albany of the Engliſh, was built. They now procured that which had alone given ſuperiority to their enemies. And the Adirondacks were, not long after, annihilated as a nation.

It was at this time that the mutual dread and enmity between the Five nations and the French commenced, which brought ſo many calamities on both. It was at the ſame time that a peace enſued between the former and the Dutch, which continued without interruption, becauſe it was advantageous to both; the one was conſtantly engaged in war, the other was occupied with the arts of peace. When the Engliſh acquired poſſeſſion of New-York they were adopted, by the tribes, in the place of their ancient allies, and a ſimilar good correſpondence continued, becauſe the ſame cauſes exiſted. Engaged in continual warfare, and neglected by France, the colony remained long inconſiderable and feeble: And it was not till the year 1640 that the French laid the foundation of Montreal, which long formed rather a mart for the trade

of

of the weſtern Indians than a plantation for the purpoſe of tillage. All parties being at length tired of a war, which was attended with neither honour nor advantage, a general peace was concluded in the year 1667, which continued till the arrival of Dongan without any conſiderable interruption. The French now advanced along the river St. Lawrence; and, during the year 1672, built Fort Frontenact on its north-weſtern bank, where it ruſhes from Ontario, its mighty ſource. But a peace, which was ſo advantageous to the Canadians, by enabling them to erect diſtant fortifications, and to extend their commerce over an immenſe country, proved extremely inconvenient to the Engliſh colonies. The Five nations, in order to gratify their paſſion for war, to revenge inſults offered during the time of their diſtreſs, turned their arms ſouthward, and conquered the country from the Miſſiſſippi to the borders of the plantations as far as Carolina, deſtroying numerous nations, whoſe names no longer remain. And Virginia and Maryland were involved often in the calamities of their allies, whom they were unable to protect, except by treaties; which were generally infringed, becauſe they could not be enforced. In July, 1684, however, Lord Effingham and Dongan concluded a definitive peace with theſe powerful tribes for all the ſettlements, which was long inviolably kept, becauſe they ſoon renewed the war with their ancient enemies, the French. It was at this time that the traders of New-York firſt adventured on the great lakes weſtward, in order to participate with the Canadians in a commerce which was ſo extremely gainful, and which was obſtructed by their rivals in proportion to its importance. Animated by a zeal which has juſtly acquired him honour, Dongan ſolicited the miniſters of England to prevent the Canadians from navigating the lakes which belonged to the Five nations, and conſequently to England. But he was told, what he might have known: That it was to no purpoſe to aſk the government of France to prohibit her ſubjects from purſuing an advantageous commerce in favour of their rivals: He was directed to encourage the Indians, in order that they might adhere to England; to act prudently, ſo as to give no umbrage to European neighbours: And, by peaceful arts, to make it the intereſt of all the tribes to trade rather with the coloniſts than the French.[42] Then commenced diſ-

putes between the two nations, which long endangered both, the conſequences of which are perhaps at this day felt.

When the duke of York aſcended the throne of his brother, this province, with its dependencies, devolved on the crown. And notice of this intereſting event being formally tranſmitted thither, he was proclaimed within his ancient territories with every demonſtration of unfeigned joy: All men joining in felicitations of his good fortune, while they had cauſe to deplore it as the greateſt of evils.[43] Long had they ſolicited, with anxiety, for a grant of privileges ſimilar to thoſe of other colonies, with deſign to perpetuate that form of government which had been given formerly to their prayers, and had been received with ſatisfaction. And a patent had been actually ſigned by that prince, which required only ſome trivial ſolemnity to render it complete and irrevocable. But a king of England degraded his ſtation when he refuſed to confirm what, as duke of York, he had formerly agreed to. In vain did the corporation of New-York, and various public and private bodies, beg for a confirmation of their privileges. Having determined to eſtabliſh the ſame arbitrary rule in this province as he had deſigned for New-England, far from conferring new immunities, he even withdrew the old.[44] In June, 1686, Dongan's commiſſion was renewed:[45] Empowering him, with conſent of the council, to make laws as near as might be to thoſe of England, to continue former taxes, and to impoſe new ones: And he was inſtructed to govern according to his commiſſion; to take away no man's life, member, or eſtate, contrary to the law of the province; to allow no printing-preſs: Thus eſtabliſhing a real tyranny, and depriving the objects of it of the moſt powerful means of rendering it odious in the ſight of mankind, and conſequently leſs permanent. Thus, deprived of the aſſembly, was New-York unhappily reduced once more to the condition of a conquered province.

Dongan continued to execute the truſt thus repoſed in him with a zeal and fidelity equal to the extenſiveneſs of it. And it is recorded of him, that, "at the ſame time that he was a Roman-catholic, he was much of "a patriot, and an irreconcileable enemy to a French power." Though ſubjected to a form altogether arbitrary, the people lived without grievan-

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ces and without complaints during the continuance of his adminiſtration, which was equally remarkable for its wiſdom and moderation. But the chief attention of every one, during thoſe days, was turned to the frequent, the continued, wars of the Five nations and the French, becauſe they ruined their Indian traffic, which was then in its infancy, and alarmed their frontier. During the peace, from 1667 to 1683, the French, with a ſpirit of enterpriſe and perſeverance which do them honour, formed a ſettlement at Detroit, eſtabliſhed a fort ſtill farther weſtward at Miſſilimakinack, and extended their commerce among the numerous tribes that hunt on the banks of the great lakes and on the higher branches of the Miſſiſſippi. They were, however, ſteadily oppoſed by the Five nations; who, untutored as they were, had ſagacity to perceive what ſeems not to have occurred to the miniſters of England. They ſaw their own deſtruction, and with it the loſs of the colonies, in the extenſive projects of France. Feeling all the inconveniences ariſing from the conſtant ſupplies furniſhed their numerous enemies, they conſtantly attacked the Canadian traders, who carried warlike ſtores to thoſe with whom they were at war. The French not only loſt their commerce, but what was of greater importance, their reputation for power, among their Indian allies.

Under the conduct of De la Barre and Nonville, two ſucceſſive governors of Canada, the French endeavoured either by force or treaty to prevent a conduct ſo inconſiſtent with their preſent and future views; but to no purpoſe.[46] Dongan mean-while received orders, in conſequence of his repeated ſolicitations, to give aid to the Five nations, and to repel their powerful oppreſſors. But the miniſters of France, having received notice of commands ſo inconſiſtent with their deſigns, perceived that it would be eaſier to execute their projects in Europe than beyond the Atlantic: And, in November, 1686, they had the addreſs to conclude a treaty of neutrality for America with James, ſtipulating what ſeems to have been its chief object, that no aſſiſtance ſhould be given to ſavages. Dongan was ordered to execute ſtrictly what ſeems to have ſacrificed the tribes, which had long formed a mighty wall againſt the irruptions of the Canadians, to the miſtaken politics of his maſter.[47] And, according to their

their uſual policy, the French either debauched or chaſtiſed the Indian allies of England, to whom that gentleman could give no other aid than the moſt ſalutary advice, which had proved of more real advantage than the forces of his province, had it been at all times carefully followed. The miniſters of England, in the following year, diſcovered, when it was too late, what ought to have been foreſeen; "that a treaty of neu-"trality, in America, was not for the intereſt of England."

Though a freſh treaty was executed in December, 1687, for the prevention of hoſtilities between the French and Engliſh coloniſts, till January, 1689, James executed a project of the greateſt conſequence, had it proved as laſting as it was well deſigned. In the union of the northern colonies, formed as a barrier againſt the encroachments of Canada, New-York was included. And, as the ſervices of Dongan were now no longer neceſſary, his commiſſion was ſuperſeded in April, 1688. He was ordered, at the ſame time, to deliver over his charge to Sir Edmond Andros; who ſoon after aſſumed the adminiſtration in his room. Thus, at the end of four-and-twenty years, from the epoch of its conqueſt, during which it had acquired no great augmentation of people, of commerce, or wealth, New-York ceaſed to be a ſeparate province. And it had now the mortification to be ruled by Nicholſon, the lieutenant-governor, with the advice of part of the grand council of New-England. During their ſhort adminiſtration, the people felt no other grievance, than the diſquietude, which naturally afflicts men, who perceive themſelves reduced to an unmerited ſtate of degradation. [48]

But a change, which hurt the pride of all, gave the greateſt diſſatisfaction to every one. The weak who had ſeen "papiſts ſettle in the province "under the ſmiles of the late governor," deemed their religion in danger, and "trembled for the proteſtant cauſe." [49] The wiſe, obſerving the province degraded by its annexation to a hated rival, with greater reaſon conſidered their civil rights as annihilated. During this ſtate of the minds of men, intelligence of deſigns, in favour of the prince of Orange, fanned the ſpark of diſcontent and inflamed the public expectation. Yet all remained quiet, till tidings arrived of the revolution at Boſton, which deprived Andros of power; and every one ſeemed diſpoſed to wait patiently

patiently till orders ſhould be tranſmitted by the prince, had not the ſeeds of ſedition been blown thence to New-York. Information of the acceſſion of William and Mary to the throne was received with joy, becauſe it was equally agreeable to people and rulers, and the lieutenant-governor, and council, waited with anxiety for orders to proclaim their new ſovereigns. But, while the principal officers and magiſtrates were aſſembled to conſult of the public ſafety, the fort was ſeized by "the "rabble," [50] who are always impatient, and ſeldom promote their own good in the numerous changes of which they are made the inſtruments. It was on this occaſion that Jacob Leiſler, a merchant of ruined fortunes, a foreigner of the loweſt education, a man of the weakeſt abilities, emerged from the crowd, and placed himſelf at the head of the inſurgents. He was not at firſt ſupported openly by men of property and conſequence, who uſually fear the loſs of their intereſts in popular innovation. A report, however, being circulated, that a fleet was arrived from the prince of Orange, it had then that prodigious effect, which rumours generally have when the minds of the multitude are greatly agitated; and he was inſtantly joined by great numbers in arms. In order to bind the whole together, a declaration [51] was ſigned, promiſing to guard the fort, on behalf of the powers now governing England, to be ſurrendered to the perſon, of the proteſtant religion, who ſhall be ſent to take poſſeſſion thereof. Amid a ferment, which it had been unable to prevent or to extinguiſh, the council "thought it adviſable that Nicholſon ſhould de-"part to England, to give an account of affairs." And with a ſpirit, which does honour to that body, it at the ſame time repreſented, to the ſecretary of ſtate, "how fatal it had been to New-York to be annexed "to Boſton, and prayed for a redreſs of grievances, before any ſettle-"ment ſhould be made." [52] Its patriotic efforts were attended with the moſt ſalutary effects, though the province ſeems never to have rewarded, as it ought, the laudable conduct of its benefactors.

In order to add reputation and ſtrength to his party, Leiſler ſoon called a convention of deputies from the towns and counties, to which his influence extended: And, to it were admitted two perſons, delegated by the aſſembly of Connecticut, to aſſiſt with their advice. The convention immediately

immediately conferred the command of the fort on Leiſler, as a reward of his forward zeal. It raiſed a few troops for the common defence; that colony agreeing "to ſend ten ſoldiers out of mere affection for New-"York." It appointed a new collector of the cuſtoms; diſplacing Plowman, *becauſe he was a papiſt*. In order to induce thoſe to return, who had fled from the ſtorm of the times, it publiſhed a declaration, promiſing protection to all that will purſue their occupations in peace. And it ordered a day of thankſgiving for this ſignal deliverance of the province; directing, with peculiar propriety, that it ſhould be inculcated on the people "to fear God, to honour the king, and not to meddle with thoſe "that are given to change." William and Mary were proclaimed in June, 1689. And, now was the province ruled by a *committee of ſafety*, which had been ſuggeſted by New-England, at the head of which Leiſler was placed, as the propereſt inſtrument in the hands of others. [53]

When William was informed of the dutiful ſubmiſſion of the province, of the attachment of the council and officers, he tranſmitted a letter to lieutenant-governor Nicholſon, or to ſuch as for the time execute the law; empowering him to adminiſter the government in his name. [54] Conſidering the royal order as addreſſed to himſelf, in the abſence of that gentleman, Leiſler compelled the meſſenger to deliver it to him, notwithſtanding the proteſt of the late council. And he inſtantly aſſumed the name, and exerted the authority of governor. He convened two ſeſſions of aſſembly, during the year 1690; which paſſed a variety of laws, with the ſame unconcern as if their power had been eſtabliſhed from the remoteſt antiquity, and impoſed conſiderable taxes, either for the ſupport of the preſent power, or for defence of the province. But not only the authority of Leiſler, which indeed was liable to great exception, but the legality of thoſe duties was diſputed by a party, conſiderable from its numbers and former rank, which refuſed to obey the one or to pay the other. And it required force to maintain his authority within the city of New-York, where he was often inſulted, though this was the ſeat of his power. [55] The whole ſouthern parts of the colony ſubmitted to Leiſler with a cheerfulneſs, in proportion as they approved his conduct or dreaded his power. The inhabitants of the eaſtern diſtricts of Long-Iſland,

Iſland, who had originally emigrated from New-England, and had never cordially obeyed, profeſſed their ſubmiſſion, while, with their uſual diſſimulation, they ſolicited Connecticut to receive them under its juriſdiction. But he was oppoſed by the people of Albany, who, being equally friends of the Revolution, formed a convention, which reſolved to maintain the garriſon for William and Mary, but independent of a man, whom they conſidered juſtly, perhaps, as an uſurper, and whoſe violence they feared. Inebriated with power, newly acquired and unmerited, which has too often corrupted wiſer minds, conſidering all as rebels againſt the king, who did not ſubmit to his authority, he determined to reduce them by the terror of his power to that ſubmiſſion, which they refuſed to his name and pretenſions. Animated by theſe motives, both parties prepared, the one to reduce, the other to retain poſſeſſion of Albany. But a cruel irruption of the French and their Indians on that frontier, which ought to have taught the virtue of moderation to all, proved favourable to the views of Leiſler. And, his arms conducted by his confident Milbourne, and reinforced by eighty men ſent him from Connecticut, at length proved victorious. The principal inhabitants fled into the neighbouring colonies, and their eſtates were confiſcated by the conquerors, with the true ſpirit of civil diſcord, unfeeling and improvident. "The poſterity "of the ſufferers," as we are aſſured, "never ſpeak of thoſe troubles "without the bittereſt invectives againſt Leiſler and his adherents."[56] Yet hiſtory diſplays ſuch revolutions to the obſervation of mankind in vain, becauſe they ſeldom expect ſimilar events, till they have already occurred with their attendant evils. It was on this occaſion, that Maſſachuſets, New-Plymouth, and Connecticut, formed a league with Leiſler; agreeing to raiſe nine-hundred men for mutual defence.[57] Of New-England it is a remarkable characteriſtic, that ſhe has at all times found delight amid ſcenes of turbulence. No governor of royal appointment, either before this æra or ſince, could ever engage her in ſimilar meaſures, though conjunctures have often occurred equally proper, becauſe equally dangerous to common intereſts. Addreſſes were ſent to William, from all parts of this diſtracted province, by every denomination of men; repreſenting their oppreſſions, and praying for ſpeedy pro-

tection: And, Leifler ſent Blagg as a ſpecial meſſenger to England, to ſet forth thoſe ſervices, which occaſioned the preſent and future miſeries of the people, and to ſue for reward.

Meanwhile, Nicholſon having arrived at court, and repreſented the ſad condition of the province, to which it was reduced equally by foreign invaſion and domeſtic faction, Colonel Sloughter was appointed governor of New-York, in Auguſt, 1689. Thus was that colony again ſeparated from Boſton, becauſe the council had repreſented this policy as eſſential to its exiſtence. But, owing to the embarraſſed ſituation of the affairs of England, and to other cauſes, he did not arrive within his government till March, 1691. He immediately publiſhed his commiſſion in the uſual form, and aſſumed the adminiſtration. Yet Leifler, enamoured of power, or betrayed by ignorance, refuſed to ſurrender the fort when formally demanded in the name of the common ſovereign of both; pretending "that he knew him not," and ſaying, that "he "would own no governor without orders under the king's hand." The prudent vigour, however, of that magiſtrate, aided by a numerous body of the inhabitants, who appeared in arms to ſupport the royal authority, ſoon compelled that infatuated man to ſubmit at diſcretion; who ſoon experienced that rigour which he had often inflicted on others, becauſe civil diſcord delights in retaliation. A ſpecial court, compoſed chiefly of thoſe who had lately ſuffered oppreſſion, was ſoon appointed for the trial of the late governor and his aſſociates for treaſon and murder. Six pleaded, and were found guilty. Leifler, and Milbourne, his principal adviſer, denying the juriſdiction of the court, with the true ſpirit of enthuſiaſm, refuſed to anſwer, and were condemned. The former were pardoned: The two latter, upon the ſolicitation of the two houſes of aſſembly, were not long after executed.[59] And though this event gratified their numerous enemies, it gave riſe to two violent factions, which long diſtracted public affairs, and embittered private enjoyment. The parliament, influenced in after-times by the intrigues of Maſſachuſets, reverſed their attainder:[60] And this memorable exertion of parliamentary power, even in the reign of William, which annulled the judgement of a colonial court of juſtice, during the ſeaſon of diſtruſt and oppoſition,

would

would have ſpread diſcontent and inſurrection through the American continent.

AUTHORITIES AND NOTES.

[1] The journals of the four ſucceſſive voyages of Hudſon, during the years 1607-8-9-10, have been preſerved by Purchas, and ſhew preciſely the nature and extent of each.—Pilg. 3 v. p. 530-95.—The lords of the committee of colonies *conſidered*, during the year 1674, "of employing a "proper perſon to continue Purchas's Collections." Nothing would have been of more importance; becauſe ſuch works form the very eſſence of hiſtory. As early as the years 1615-16, thoſe renowned navigators, Le Mere and Schouten, took formal poſſeſſion of ſeveral iſlands in the ſouthern hemiſphere in the name of the States-general.—Corps Diplomat. 5 v. p. 282.—The ſame book, and the collection of treaties, ſhew how gradually the independence of the ſtates was admitted by various nations, from their firſt alliance with Elizabeth, in 1578, to the treaty of Munſter in 1648, when it was acknowledged by Spain.—Treat. of peace, 3 v. p. 516.

[2] Stith's Hiſt. Virg. p. 153.—[3] This Edict may be ſeen in Corps Diplomatique, 5 v. 2d. part, p. 363; in Leonard; and in other ſimilar collections.—[4] But it is in vain to ſearch ſuch voluminous compilations for the grant of New-Netherlands of 1621. Their governor had no copy of it in 1660; he refers to it at the conqueſt of the colony in 1664: Yet what ſeems to have formed the *great charter* of the province is not to be found among the Dutch records at New-York.—Smith's Hiſt. p. 3-11-19.

[5] Neal's N. Eng. 1 v. p. 126.—[6] Hutch. Hiſt. Maſſa. 2 v. Apen. p. 469; which cites Bradford's MSS.—[7] There are no books, with regard to *ſtate-affairs*, among the Dutch records at New-York prior to the year 1638.—Smith's Hiſt. p. 4.—[8] Ib. and the hiſtorians of New England.—[9] See a copy of the deed among N. York Pap. Plant. Off. 1 v.

p. 1. — [10] Smith's Hiſt. p. 5. — [11] Ib. p. 4-13, and the charter of Maryland.

[12] See Sir John Dalrymple's Mem. 2 v. p. 4. for a ſingular inſtance of the contempt of Charles II. for the Dutch. — [13] See the grant in N. York, Ent. 1. v. p. 7. — [14] Hutch. Hiſt. Maſſ. 1 v. p. 231. — [15] Smith's Hiſt. p. 13-23: See the articles of capitulation in N. York pap. 1 v. p. 59. — Of all the ſtipulations in their favour, the Dutch conſidered that as the moſt important, which conferred an open trade with Holland, which afterwards occaſioned conſiderable difficulty. Having petitioned in October, 1667, that they might enjoy their free trade, according to the law of nations; the committee of plantations reported to the king: "That "in regard of the neceſſity of a commerce, which cannot at preſent be "ſupported from hence, a temporary permiſſion ſhould be allowed them "for ſeven years." But the merchants and manufacturers fearing the loſs of their own traffic, remonſtrated againſt this licence, and it was not long after taken away. — N. York pap. 1 v. p. 67-8. — The corporation of New-York once more petitioned the duke of York to be allowed a free trade to Holland, without being obliged to enter in the ports of England; "being willing to pay the cuſtoms in the colony:" But without ſucceſs. Ib. 127.

[16] Coke's Reports, Calvin's caſe. — [17] The following "*anſwers tranſ-*"*mitted by Colonel Nichols, in July*, 1665" to inquiries ſent him, will not only ſhew the nature of the government eſtabliſhed by him, and many particulars of the early condition of the colony, but demonſtrate how much the lawyers and hiſtorians of New-York have been miſtaken with regard to its ancient juriſprudence. — From N. York pap. 1 v. p. 30. Compare Smith's Hiſt. p. 36 and 45, with the ſubjoined *repreſentation of Nichols.*

1. The governor and council, the high ſheriff, and the juſtices of the peace, in the court of the general aſſizes, have the ſupreme power of making, altering, and aboliſhing, any laws in this government. The county ſeſſions are held by juſtices on the bench, particular town courts by a conſtable and eight overſeers; the city court of New-York, by a mayor and aldermen: And all cauſes are tried *by juries.*

2. The

2. The land is naturally apt to produce corn and cattle; ſo that the ſeveral proportions or dividends of land are always allowed, with reſpect to the number of the planters, what they are able to manage, and in what time to accompliſh their undertaking; the *feed* of cattle is free in commonage to all townſhips; the lots of meadow or corn ground are peculiar to each planter.

3. The tenure of lands is derived from his royal highneſs, who grants lands to planters as their freehold for ever; they paying the cuſtomary rates with others towards the defraying of public charges: The higheſt rent or acknowledgement will be one penny an acre; the leaſt, two ſhillings and ſix-pence for every hundred acres, whereof the planters themſelves are purchaſers of the Indians.

4. The governor gives liberty to planters to find out and buy lands from the Indians where it pleaſeth beſt; but the ſeating of towns together is neceſſary in theſe parts of America, eſpecially upon the main-land.

5. Liberty of conſcience is granted, with proviſo of not diſturbing the peace of the government.

6. Liberty of fiſhing and fowling is free to all, by the patents.

7. No laws contrary to the laws of England. Soldiers only are triable by a court martial, and none others, except in caſes of ſudden invaſion, mutiny, or rebellion; as his majeſty's lieutenants in any of his counties in England may or ought to exerciſe.

8. There is no tax, impoſt, or cuſtom, payable by the planters upon corn or cattle; the country at preſent has little other product: The rate for public charges was agreed unto, in *a general aſſembly*, and is now managed by the governor and council, and the juſtices in the court of aſſizes, to that only behoof.

9. Every man who deſires to trade for furs, at his requeſt, has liberty to do ſo.

[18] Nichols informed the duke of York, by his letter, dated in November, 1665: "That ſuch is the mean condition of this town, [New-"York,] that not one ſoldier to this day has lain in ſheets, or upon any "other bed than canvas and ſtraw." N. York Pap. 1 v. p. 6. — There were in this city, during the year 1678, only 343 houſes. According to

to the common computation of ſix to every dwelling, the number of people ought to have been 2058: But there were afterwards found ten perſons in every houſe; ſo that the whole would even then amount only to 3430. During this year there belonged to it three ſhips, eight ſloops, and ſeven boats. They had increaſed, in the year 1686, to nine or ten three-maſt veſſels of about 80 or 100 tons, two or three ketches or barks of about 40 tons, and about twenty ſloops of 25 tons. At the end of eighteen years, the number of houſes had increaſed to 594; the inhabitants to 6000; and the veſſels belonging to them, in the year 1696, were 40 ſhips, 62 ſloops, and 62 boats. We may thence form a judgement with regard to the extent of the commerce of New-York at thoſe different periods. See a paper, tranſmitted by the corporation to the board of trade, in N. York Pap. G. p. 69.

[19] N. York Pap. 1 v. p. 6. — [20] Smith's Hiſt. p. 53-4. — [21] N. York Pap. 1 v. p. 8-9. — [22] Smith's Hiſt. p. 35. — [23] The ſubjoined *declaration of the deputies of Long-iſland* will not only illuſtrate this obſcure portion of the hiſtory of New-York, and confirm the text, but will place recent occurrences in a very ſtriking light. — From N. York Pap. 1 v. p. 129.

" We, the deputies, duly elected from the ſeveral towns upon Long-iſland, being aſſembled at Hampſtead, in a general meeting, by authority derived from your royal highneſs unto the honourable Colonel Nichols, as deputy-governor, do moſt humbly and thankfully acknowledge to your royal highneſs the great honour and ſatisfaction we receive in our dependence upon your royal highneſs, according to the tenor of his ſacred majeſty's patent, granted the day of 1664; wherein we acknowledge ourſelves, our heirs, and ſucceſſors, for ever, to be comprized to all intents and purpoſes, as therein is more at large expreſſed. And we do publicly and unanimouſly declare our cheerful ſubmiſſion to all ſuch laws, ſtatutes, and ordinances, which are or ſhall be made by virtue of authority from your royal highneſs, your heirs, and ſucceſſors, for ever: As alſo, that we will maintain, uphold, and defend, to the outmoſt of our power and peril of us, our heirs, and ſucceſſors, for ever, all the rights, title, and intereſt, granted by his ſacred majeſty to your royal

royal highneſs, againſt all pretenſions or invaſions, foreign or domeſtic; we being already well aſſured, that, in ſo doing, we perform our duty of allegiance to his majeſty, *as free-born ſubjects of the kingdom of England, inhabiting in theſe his majeſty's dominions.* We do farther beſeech your royal highneſs to accept of this addreſs, as the firſt fruits in this general meeting, for a memorial and record againſt us, our heirs, and ſucceſſors, when we or any of them ſhall fail in our duties. Laſtly, we beſeech your royal highneſs to take our poverties and neceſſities, in this wilderneſs-country, into ſpeedy conſideration; that, by conſtant ſupplies of trade, and your royal highneſs' more particular countenance of grace to us, and protection of us, we may daily more and more be encouraged to beſtow our labours to the improvement of thoſe his majeſty's weſtern dominions, under your royal highneſs; for whoſe health, long life, and eternal happineſs, we ſhall ever pray, as in duty bound."

[24] Smith's Hiſt. p. 35. — The following *extract of a letter from Colonel Nichols, of November, 1665, to the duke of York,* ſupports the reaſonings in the text. — From N. York Pap. 1 v. p. 6.

"My endeavours have not been wanting to put the whole government into one frame and policy, and now the moſt factious republicans cannot but acknowledge themſelves fully ſatisfied with the way and method they are in. My reſolutions are, to ſend over to your royal highneſs, this winter, a copy of the laws as they now ſtand, with the alterations made at the laſt general aſſizes; which, if you ſhall confirm and cauſe to be printed at London, the country will be infinitely obliged to you." He expreſſed his joy for the duke's victory over the Dutch.

[25] N. York Pap. 1 v. p. 31-41. — [26] Smith's Hiſt. p. 36. — [27] Nichols's letter to Secretary Morrice, of October, 1666. N. York Pap. 1 v. p. 28. — [28] Smith's Hiſt. 37-9; and ſee a variety of evidence on this ſubject, in N. York Ent. 1 v. — The moſt memorable act of the adminiſtration of Lovelace, was the purchaſe of Staten-iſland from the Indians, which ſhews how far the ſettlements had been then extended around the capital.

[27] See a copy of it in Record, Proprieties, A. p. 113. — [28] N. York Ent. 1 v. p. 156-60. — [29] N. York Pap. C. p. 72. — [30] Ib. 1 v. p. 162; N. York

N. York Ent. 1 v. 17-18. — The ſubjoined *extract of a letter, dated January, 1676, from the duke of York to Andros,* will ſhew, in oppoſition to the aſſertions of hiſtorians, that the latter was friendly to the rights of the people; it will demonſtrate the extreme averſion of that prince to popular conventions. — From N. York Ent. 2 v. p. 21.

" I have formerly written to you concerning aſſemblies in thoſe countries, and have ſince obſerved what ſeveral of the lateſt letters hint about that matter; but, unleſs you have offered what qualifications are uſual and proper to ſuch aſſemblies, I cannot but ſuſpect they would be of dangerous conſequence; nothing being more known than the aptneſs of ſuch bodies to aſſume to themſelves many privileges, which prove deſtructive to, or very often diſturb, the peace of government, when they are allowed: Neither do I ſee any uſe for them, which is not as well provided for, whilſt you and your council govern according to the eſtabliſhed laws, (thereby preſerving every man's property inviolate,) and whilſt all things that need redreſs may be ſure of finding it, either at the quarter ſeſſions or by the legal and ordinary ways; or, laſtly, by appeals to myſelf. But, however, if you continue of the ſame opinion, I ſhall be ready to conſider of any propoſal you ſhall ſend for that purpoſe."

[31] N. York Ent. 2 v. p. 24-5-30-7. — [32] N. York Pap. 1 v. 287. — [33] Sir John Werden, the ſecretary of the duke of York, in writing to Andros, in January, 1675-6, ſays: " I think it not unreaſonable (though I believe it not neceſſary) to put you in mind, that it is his royal highneſs's intention to have all perſons whatſoever treated with all the humanity and gentleneſs poſſible, that can conſiſt with the ſafety of the government; ſo that, though the laws inflict puniſhment, it may ſeem rather an example to deter others than as an act of ſeverity. — From N. York Ent. 2 v. p. 21.

[34] See the proceedings againſt Dyer, in N. York Ent. 1 v. p. 239. — [35] The ſubjoined *anſwers of Sir Edmond Andros, dated in April,* 1678, *to the inquiries of the committee of colonies,* will ſhew the condition of the province when Dongan was appointed governor, and the nature of the government was changed. — From N. York Pap. 1 v. p. 139.

1. } The governor is to have a council not exceeding ten, with
4. } whoſe advice he is to act for the ſafety and good of the country; and, in every village, town, or pariſh, there are a petty-court and court of ſeſſions: And the general court of aſſizes, compoſed of the governor and council, and all the juſtices and magiſtrates, at New-York, once a year. The petty-courts judge of five pounds, from which there is an appeal to the ſeſſions; theſe may judge of twenty pounds, and from them lies an appeal to the aſſizes; and from them to the king. The court of admiralty hath been by ſpecial commiſſion, or by the court of mayor and aldermen at New-York. The chief legiſlative power is in the governor, with advice of the council: The executive power of judgements, given by the courts, is in the ſheriffs and other civil officers. The law-book, in force, was made by the governor and aſſembly, at Hampſtead, in 1665, and ſince confirmed by his royal highneſs. [REMARK. This has been already ſhewn to be a miſtake, proceeding from the aſſizes being improperly called an aſſembly.]

5. } The militia is about 2000; of which about 140 horſe, in three
6. } troops; the foot formed into companies, moſtly under 100 men each: All are indifferently armed with fire-arms of all ſizes: They are ordered and exerciſed according to law, and are good *fire-men*. There is one ſtanding company of ſoldiers, with gunners and other officers, for the forts of Albany and New-York, which are always victualled in October and November for one year. Fortreſſes are, James-Fort, ſituated upon a point of New-York town, between Hudſon's river and the Sound: It is a ſquare, with ſtone walls, four baſtions almoſt regular, and in it 46 guns, mounted. Albany is a ſmall long ſtockadoed fort with four baſtions in it; with 12 guns, which is ſufficient againſt Indi ans. There are no privateers about our coaſts. [REMARK. The militia, or men able to bear arms, had increaſed, before the year 1686, to 4000 foot, 300 horſe, and one company of dragoons. Dongan then obſerved to the miniſters of England: I wiſh for more fortifications, as the people every day grow more numerous, and are of a turbulent diſpoſition. — N. York Pap. 1 v. p. 377.]

8. } We keep good correſpondence with all our neighbours, as to
10. } civil, legal, or judicial, proceedings; but differ with Connecticut for our bounds and mutual aſſiſtance, which they [Connecticut] nor Maſſachuſets will not admit. Our boundaries are, ſouth, the ſea; weſt, Delaware; north, to the lakes or to the French; eaſt, Connecticut river: Some iſlands eaſtward, and a tract beyond Kenebeck river, called Pemaquid. New-York is in 40 d. 35 m. Albany about 43 d. The colony is in ſeveral long narrow ſlips, of which a great part of the ſettlement was made by adventurers before any regulation, by which encroachments without patents have been formed; but, by reaſon of continual wars, no ſurvey of the wilderneſs has been made: No computation can be made of the planted and unplanted [lands]. Theſe laſt two years, about 20,000 acres have been taken up and patented for particular perſons; beſides Delaware, moſt of the lands are taken up; and, except upon Long-iſland, are improved: And, unleſs the bounds of the duke's patent are aſſerted, no great quantities at hand will be undiſpoſed of.

11. } Our principal places of trade are New-York and South-town,
16. } except Albany for the Indians. Our buildings are moſtly wood; ſome lately of ſtone and brick; good country houſes and ſtrong, of their ſeveral kinds. We have about twenty-four towns, villages, or pariſhes, in ſix precincts, diviſions, ridings, or courts of ſeſſions. We have ſeveral rivers, harbours, and roads. Hudſon's river, the chief, has about four fathom of water at coming in, but ſix, ten, or more, within; and very good anchorage either in Hudſon's river or in the Sound, the uſual road before the town. Our product is land-proviſions of all ſorts; as of wheat, exported yearly about 60,000 buſhels; peaſe, beef, pork, and ſome refuſe fiſh, tobacco, peltry from the Indians; deal and oak timber, lumber; horſes; pitch and tar are begun to be lately made: Commodities imported are, all ſorts of Engliſh manufactures for Chriſtians, and blankets, duffels, &c. for Indians, about 50,000 *l.* yearly. We have no experience in making ſalt-petre. Our merchants are not many; but, with inhabitants and planters, about 2000 able to bear arms, old inhabitants of the place or of England; except in and near New-York,

of

of Dutch extraction, and ſome of all nations: But few ſervants, who are much wanted, and but very few ſlaves.

17. No perſons whatſoever are to come from any place but according to act of parliament, which the magiſtrates are to take care of accordingly. The plantation is of late years increaſed, but no general account hath been taken, ſo it is not known how much nor of what perſons. Some few ſlaves are ſometimes brought from Barbadoes, in exchange for proviſions, and are ſold for about 30 *l.* or 35 *l.* country pay.

18. } Miniſters have been ſo ſcarce and religions ſo many, that no
20. } account can be given of the number of births. Scarcity of miniſters, and the law allowing juſtices to marry, no account can be given of the number of marriages. No account can be given of funerals, forms of burial not being generally obſerved, and few miniſters till very lately.

21. } A merchant, worth a 1000 *l.* or 500 *l.* is accounted a good ſub-
22. } ſtantial merchant; and a planter, worth half that in moveables, is accounted rich. All the eſtates may be valued at 150,000 *l.* There may have lately traded to the colony, in a year, from 10 to 15 ſhips or veſſels, upon an average, of 100 tons each, Engliſh, New-England, and of our own, built; of which 5 ſmall ſhips and a ketch are now belonging to New-York; four of them built there.

23. } Obſtructions to improvement of planting and navigation are
25. } owing to the diſtinctions of colonies for our own produce, as if different nations, though next neighbours. The advantages would be great if the colonies might, without diſtinction, ſupply each other with their own produce, punctually obſerving all acts of parliament for exportation. The duties upon goods exported are, 2 *s.* for each hogſhead of tobacco, and 1 *s.* on a beaver ſkin, and other peltry proportionably; proviſions, and every thing beſides, pay nothing. Goods imported pay 2 per cent. except liquors, particularly rated ſomething more: Indian trade, going up the river, pays 3 per cent. There are ſome few quit-rents; as alſo exciſe or licence money for retailing ſtrong drink, and a weigh-houſe or public ſcale: All which taxes are applied to the garriſon and public charge; which they have not yet ſatisfied by a great deal.

26. } There are religions of all ſorts; one church of England; ſe-
27. } veral Preſbyterians and Independents, Quakers and Anabaptiſts, of ſeveral ſects; ſome Jews; but the Preſbyterians and Independents are the moſt numerous and ſubſtantial. The duke maintains a chaplain, which is all the certain allowance to the church of England. All places are obliged to build churches, and provide for a miniſter, in which moſt are very wanting; but Preſbyterians and Independents are moſt deſirous to have and maintain miniſters, if to be had. There are about twenty churches or meeting-places, of which above half are vacant; their allowances are like to be from 40*l.* to 70*l.* a year, with a houſe and garden. There are no beggars, but all poor are taken care of. If good miniſters could be had to go thither, they might do well, and gain much upon thoſe people.

April, 1678. E. Andros.

[36] Smith's Hiſt. p. 44-5. — [37] The two following papers throw conſiderable light on that important part of the hiſtory of New-York, with regard to the introduction of the firſt aſſembly.

A letter from the Secretary of the duke of York to Brockholes, the deputy-governor: Deſiring him to keep things quiet: Intimating that an aſſembly would be allowed: But to get ſecurity that a revenue ſhould be granted. — From N. York Ent. 2 v. p. 37.

" Sir, St. James's, 1ſt February, 1681-2.

His royal highneſs's commiſſioners have, by his orders, had divers meetings of late, touching the ſtate of affairs at New-York, and are, as faſt as they can, preparing all things for the next opportunity: But, by reaſon of his royal highneſs's living in Scotland, and the ſuddenneſs of the ſhip's departure, I am directed to write this letter to you at preſent, to deſire you to take the beſt care you can (in the interim) to keep all things in the government of New-York and its dependencies in quiet and good order, eſpecially that the ſoldiers may behave themſelves diſcreetly, that the civil magiſtrates may have their legal authority preſerved, and that all ſorts of people may enjoy their rights and properties. And, though I cannot yet poſitively aſſure you that it will be ſo, yet I may hint

hint to you that we believe his royal highneſs will condeſcend to the deſires of that colony, in granting them equal privileges, in chooſing an aſſembly, &c. as the other Engliſh plantations in America have: But, if that be, it will be upon a ſuppoſition that the inhabitants will agree to raiſe money, to diſcharge the public debts, and to ſettle ſuch a fund for the future as may be ſufficient for the maintenance of the government and garriſon. Wherefore you are privately to ſound the inclination of the principal inhabitants there upon this great point; and, if you find them willing to give any aſſurance of their readineſs herein, you muſt then endeavour to get ſome overtures of the methods of raiſing ſuch monies and fund for the future, and a certification of ſuch their conſent, under the hands of the moſt eminent perſons for abilities and eſtates in thoſe parts; and whatſoever you do herein, or in any other particular, that relates to his royal highneſs's ſervice, you are conſtantly to ſend an account of it to me, for the fuller information of his royal highneſs and his commiſſioners. And this is all at preſent from

JOHN WERDEN."

A Letter from the duke of York to the Deputy-governor. — From N. York Ent. 2 v. p. 40. — Aſſuring him of his intention to grant an aſſembly: Deſiring him to diſpoſe the people to eſtabliſh funds for the maintenance of the government and garriſon.

" Lieutenant Brockholes, Newmarket, 28 March, 1682.

Since my arrival here I have had the reſult of divers meetings of my commiſſioners, touching the ſtate of affairs at New-York; but, until I come to London, (which I doubt will not be till this ſhip be ſailed,) I cannot perfect thoſe reſolutions which I ſhall take thereupon; only for the preſent, in confirmation of what my ſecretary lately wrote to you, I ſend this to tell you, that I intend to eſtabliſh ſuch a frame of government at New-York as ſhall have all the advantages and privileges to the inhabitants and traders there which his majeſty's other plantations in America do enjoy, particularly in the chooſing of an aſſembly, and in all other things as near as may be to the laws of England. But then I ſhall expect that the country of New-York, and its dependencies, ſhall provide

vide ſome certain funds for the neceſſary ſupport of the government and garriſon, and for diſcharging the arrears which are or ſhall be incurred, ſince the obſtructions that have lately been to the collection of the public revenue there. Wherefore you are to uſe all diligence to induce the people there, of beſt note and eſtates, to diſpoſe themſelves and their friends to a cheerful compliance in this point; and you may aſſure them, that whatſoever ſhall be thus raiſed ſhall be applied to thoſe public uſes. For I ſeek the common good and protection of the country, and the increaſe of their trade, before any advantage to myſelf in this matter. By the next ſhip I intend you ſhall hear farther from me. I am, &c.

JAMES."

[38] N. York Ent. 2 v. p. 40-1. — [39] Smith's Hiſt. p. 60. — [40] N. York Ent. 1 v. p. 50-2. — [41] Smith, p. 73-5. — [42] Colden's Hiſt. Five Nations, ch. 1-2-3; Charlevoix Hiſt. N. France, 1 v. p. 220-7-37; N. York Ent. 1 v. 50-1. — They, who are deſirous to peruſe a minute account of the ſituation, the numbers, the practices, of the Five nations, will be gratified by the ſubjoined paper; becauſe it ſhews better, than any thing yet publiſhed, the former condition of a mighty confederacy, which once made ſo great a figure, which is now almoſt extinct.

Obſervations of Wentworth Greenhalph, in a journey from Albany to the Indians weſtward, [*the Five nations.*] Begun the 28th of May, 1677, and ended the 14th of July following. — From N. York Pap. 1 v. p. 132.

Situation and ſtrength of the Maquas [*Mohawks.*]

The Maquas have four towns; viz. Cahaniaga, Canagora, Canajorha, Tionondague, beſides a ſmall village, about 110 miles from Albany.

Cahaniaga is double ſtockadoed round, has four ports, about four feet wide: contains about twenty-four houſes, and is ſituated upon the edge of a hill, about a bow-ſhot from the river ſide.

Canagora is only ſingly ſtockadoed, has four ports like the former; contains about ſixteen houſes, is ſituated upon a flat, about a ſtone-throw from the water ſide.

Canajorha

Canajorha is alſo ſingly ſtockadoed, and has the like number of ports and quantity of houſes as Canagora; the like ſituation, only about two miles diſtant from the water.

Tionondague is double ſtockadoed, has four ports four feet wide; contains about thirty houſes; is ſituated on a hill, about a bow-ſhot from the river.

The ſmall village is without any fence, and contains about ten houſes, cloſe by the river ſide: On the north ſide of the river, as are all the former.

The Maquas paſs in all for about 300 fighting men. Their corn grows cloſe by the river ſide.

Of the ſituation of the Oneydoes and the Onondagoes, and their ſtrength.

The Oneydoes have but one town, which lies about 130 miles weſtward of the Maquas. It is ſituated about 20 miles from a ſmall river, which comes out of the hills to the ſouthward, and runs into the lake Terſhirogue; and about 30 miles diſtant from the Maquas river, which lies to the northward. The town is newly ſettled, double ſtockadoed; but little cleared ground, ſo that they are forced to ſend to the Onondagoes to buy corn. The town conſiſts of about 100 houſes. They are ſaid to have about 200 fighting men. Their corn-grounds are round about the town.

The Onondagoes have but one town; but it is very large, conſiſting of about 140 houſes; not fenced. It is ſituated on a hill that is very large, the bank on each ſide extending itſelf at leaſt two miles; all cleared lands, whereon the corn is planted. They have likewiſe a ſmall village, about 2 miles beyond that, conſiſting of about 24 houſes. They lie ſouthward about 36 miles from the Oneydoes. They plant abundance of corn, which they ſell to the Oneydoes.

The Onondagoes are ſaid to be about 350 fighting men, and live about 15 miles from Terſhirogue.

Of the Cayugas and Senekas, their ſituation and ſtrength.

The Cayugas have three towns, about a mile diſtant from each other, but are not ſtockadoed; they do in all conſiſt of about 100 houſes; they

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are about 60 miles to the ſouthward of the Onondagoes. They intend, next ſpring, to build all their houſes together, and ſtockado them. They have abundance of corn. They lie within 2 or 3 miles of the lake Terſhirogue. They paſs for above 300 fighting men.

The Senekas have four towns; viz. Canagorah, Tiſtehatan, Canoenada, and Keint-he. Canagorah and Tiſtehatan lie within 30 miles of the lake Frontenac; the other two about 4 or 5 miles to the ſouthward of theſe. They have abundance of corn. None of their towns are ſtockadoed.

Canagorah lies on the top of a great hill, and, in that as well as in the bigneſs, much like Onondagoe, containing 150 houſes, northweſtward of Cayuga 72 miles.

Here the Indians were very deſirous to ſee us ride our horſes, which we did. They made feaſts and dancing, and invited us, that, when all the maids were together, both we and our Indians might chooſe ſuch as liked us to lie with.

Tiſtehaten lies on the edge of a hill: Not much cleared ground; is near the river Tiſtehaten, which ſignifies *bending*. It lies to the northward of Canagorah about 30 miles; contains about 120 houſes, being the largeſt of all the houſes we ſaw; the ordinary being 50 or 60 feet, and ſome 130 or 140 feet long, with 13 or 14 fires in one houſe. They have good ſtore of corn growing about a mile to the northward of the town.

Being at this place, on the 17th of June, there came 50 priſoners from the ſouthweſtward, and they were of two nations; ſome whereof have a few guns, the other none: One nation is about ten days journey from any Chriſtians, and trade only with one great houſe, not far from the ſea; and the other, as they ſay, trade only with a black people. This day, of them were burnt two women and a man, and a child killed with a ſtone. At night we heard a great noiſe, as if the houſes had all fallen; but it was only the inhabitants driving away the ghoſts of the murdered.

The 18th, going to Canagorah, we overtook the priſoners. When the ſoldiers ſaw us, they ſtopped each his priſoner, and made him ſing,

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and cut off their fingers and ſlaſhed their bodies with a knife; and, when they had ſung, each man confeſſed how many men he had killed. That day, at Canagorah, there were moſt cruelly burned four men, four women, and one boy; the cruelty laſted about ſeven hours: When they were almoſt dead, letting them looſe to the mercy of the boys, and taking the hearts of ſuch as were dead to feaſt on.

Canoenada lies about 4 miles to the ſouthward of Canagorah; contains about 30 houſes; well furniſhed with corn.

Keint-he lies about 4 or 5 miles to the ſouthward of Tiſtehaten; contains about 24 houſes; well furniſhed with corn.

The Senekas are counted to be in all about 1000 fighting men.

Whole force.	Maquas	300
	Oneydoes	200
	Onondagoes	350
	Cayugas	300
	Senekas	1000
		2150 fighting men.

REMARK. During the year 1685 an accurate account was taken, by order of the governor, of the people of Canada, which amounted to 17,000; of whom 3000 were ſuppoſed to be able to carry arms.—N. York Pap. 1 v. p. 386. — We may thence form a judgement with regard to the comparative ſtrength of the two belligerent powers, whoſe wars were ſo long and deſtructive.

[43] Governor Dongan, giving the ſecretary of ſtate an account of the joy of the people of New-York on the acceſſion of James II. ſaid, in his letter, dated 11th Auguſt, 1685: "We were all glad to hear ſuch good news as his majeſty's ſucceſs againſt the rebels. Your letter came very ſeaſonably, to give us a true account of the rebellion in England and Scotland; malicious and factious reports having peſtered this place, which came every day by the way of Boſton." — N. York Pap. 1 v. p. 310.

[44] Jour. Plant. Off. 5 v. p. 90-101-264; Ib. 6 v. p. 70-1; N. York Ent. 2 v. p. 48.—[45] Ib. 61-118-20. — There was no printing-preſs at New-York during the year 1689. For the proceedings of the inſur-

gents, under Leiſler, were printed at Boſton. See theſe in N. York Pap. 2 v. p. 118.

[46] Colden's Hiſt. Five Nations, ch. 4-5. — [47] N. York Ent. 2 v. p. 157-65-7. — [48] Ib. p. 185-6. — [49] Smith's Hiſt. p. 58-9. — [50] N. York Ent. 2 v. p. 187-200. — [51] The ſubjoined *declaration of the inhabitants and ſoldiers of the train-bands of New-York* ſhews the principles and motives of the inſurgents. — From N. York Pap. 2 v. p. 108.

" That, notwithſtanding the many grievances that we ſuffered under a wicked popiſh governor Dongan, we were reſolved to expect our redemption from England; but, when we challenged our liberties, properties, and laws, we were cajoled and terrified out of our reaſon by lieutenant-governor Nicholſon, *who threatened to ſet fire to the city for doing our duty.* We have thought fit, for our conſervation, and daily ſeeing ſoldiers arrive, of whom there were a number of papiſts, contrary to law, we reſolved to ſecure the fort, which we effected without reſiſtance. *We declare to be entirely oppoſite to papiſts and their religion,* and, expecting orders from England, we ſhall faithfully guard the fort in behalf of the power now governing England, *to be ſurrendered to the perſon of the proteſtant religion,* that ſhall be ſent by ſaid power."

[52] N. York Ent. 2 v. p. 187-200. — [53] The tranſactions of the convention may be ſeen among N. York Pap. 2 v. p. 118, &c. — [54] N. York Ent. 2 v. p. 194. — [55] N. York Pap. 2 v. p. 330-8-60. — [56] Smith's Hiſt. p. 63. — [57] N. York Pap. 2 v. p. 338, and throughout. — [58] The following extracts will exhibit the ſufferings, the merits, the pretenſions, of all parties.

Part of the addreſs of the merchants and principal inhabitants of New-York to William. — From N. York Ent. 2 v. p. 279.

" We beg leave to repreſent how long we have been ſorely oppreſſed, having now groaned near twelve months under the burden of ſlavery and arbitrary power, exerciſed over us by the enraged fury of ill men, who have aſſumed all authority, and ruling us by the ſword, at the will of an inſolent alien, [Leiſler,] aſſiſted by thoſe, who formerly were thought unfit to be in the meaneſt offices among us. We, therefore, ſupplicate your majeſty for ſpeedy protection and relief."

Remark.

REMARK. Colonel Sloughter at a ſubſequent day aſſerted, "that the facts contained in this addreſs were all true." — Ib. p. 295.

To that prince Blagg repreſented, on behalf of Leiſler: That the majority of the people had depoſed the late lieutenant-governor, and choſen him: That he had proclaimed the king and queen, and adminiſtered the government in their names; that it was neceſſary to remove Nicholſon, becauſe he had neglected to repair the fortifications *with a view to betray it to the enemy, and had ſhewn a deſign to burn the city about their ears:* And he prayed for approbation of his conduct. — Ib. 263-5.

59 The ſubjoined *extract of a letter from Governor Sloughter, dated 7th of May*, 1691, *to the ſecretary of ſtate*, throws abundant light on a tranſaction, which gave riſe to the moſt important occurrences, during the two ſubſequent reigns, which has been obſcured by the united miſ-repreſentations of ignorance and of faction. — From N. York Ent. 2 v. p. 297.

"I arrived here the 18th of March; and propoſed not to go to the town before the man of war: But, underſtanding the diſtreſs the inhabitants laboured under, I went up in the pinnace, when I found all in arms. Near four hundred men had come out of the country to defend the city and their majeſties ſtores and forces againſt Leiſler, who had raiſed near three hundred men, and fortified the fort againſt them; declaring, by public proclamation, them all traitors, papiſts, and King James's men, and that we were ſent to betray the country to the French; and he not only denied his majeſty's officers the fort, but committed open hoſtilities upon them, by ſallying out of the fort, and taking their men priſoners, ſhooting their centinels, and firing of great ſhot through the ſtreets. Upon my arrival, I cauſed my patent to be publicly read; took the oaths appointed; and ſwore-in as many of the council as were at liberty. I then ſent Major Ingoldſby to demand the fort to be inſtantly delivered, and thoſe of the council, who were detained, to be ſent to the board. Both demands Leiſler refuſed; pretending, he knew me not, neither would he own any governor, without orders under the king's own hand: Yet, that night he ſent one Stol, who had ſeen me in England, to ſatisfy him that I was the perſon who was ſaid to have been ap-

pointed governor; and he knew me. I then ſent, and made a ſecond demand; but received for anſwer, that the fort was not to be delivered upon ſuch eaſy terms. I then determined to ſend no more meſſages; but ordered the man of war to moor as cloſe as poſſible, being reſolved to attack him immediately: But, before any was made, Leiſler ſent his ſecretary, Mr. Milbourne, and one De Laney, to capitulate with me; and, inſtead of entering into any treaty, I preſently ſecured them. I ſent Major Ingoldſby to order Leiſler's men to ground their arms, and to ſeize Leiſler and his council. After ſome debate, moſt of the men grounding their arms, the Major ſeized hispriſoners, and brought them before me. By the advice of the council, I iſſued a commiſſion of oyer and terminer for the trial of Leiſler and his council for murder and treaſon. Six pleaded, and were found guilty. But Leiſler and Milbourne refuſed to plead; and ſo received ſentence of death with the others. The record of the whole proceedings is now ſent you. Certainly, never greater villains lived, as by other papers will appear. I am much ſolicited to execute the condemned, but am reſolved firſt to know their majeſties pleaſure, if by other means I can keep the people quiet."

Remark. Upon the application of the ſon of Leiſler to William, the privy-council reported: That the trial and execution were legal; but recommended the reſtoration of the forfeited eſtates. — N. York Ent. 2 v. p. 386-7. — And a general pardon for the province was ſoon after granted. — Ib. p. 388.

[60] 6-7. Will. 3. ch. 30. (private). — The intrigue, which gave exiſtence to this act of parliament, will be developed in the following book. It will then appear, that one agent of Maſſachuſets framed the bill, while the other ſat as chairman of the committee, which reported it.

CHAP.

CHAP. XX.

New-Jerſey granted. — Remarks. — Conceſſions given. — Adminiſtration of Nichols. — Origin of the claims of New-York. — Surrenders the government to Carteret. — His adminiſtration. — An inſurrection. — His expulſion. — Re-conquered by the Dutch. — The rule of Andros. — The country divided. — Eaſt-Jerſey reſtored to Carteret. — Weſt-Jerſey retained. — The ſecond adminiſtration of Carteret. — The Jerſeys delivered from illegal taxes. — Weſt-Jerſey reſtored. — Diſputes in Eaſt-Jerſey. — Carteret ſells his province. — Various new proprietors. — Diſtractions ariſe. — Acts of trade oppoſed. — A writ of quo-warranto iſſued. — Annexed to New-England. — Proprietors of Eaſt-Jerſey reſign their charter. — Revolution.

THE duke of York, conſidering the conqueſt of New-Netherlands as already atchieved, becauſe an armament had been ſent out with that deſign, conferred a conſiderable part of them on Lord Berkeley and Sir George Carteret, whom he eſteemed for their principles, becauſe they reſembled his own. In June, 1664, he conveyed to them in abſolute property, that tract of land adjacent to New-England, lying weſtward of Long-Iſland, bounded, on the eaſt, ſouth, and weſt, by the river Hudſon, the ſea, and the Delaware; on the north, by the 41ſt degree and 40 minutes of latitude. In compliment to the latter, this region he denominated New-Jerſey. And he transferred to them every right, every royalty, and all the powers of government, which he himſelf poſſeſſed.[1] They who compare the charter given to that prince, conferring the country from Connecticut to the Delaware, with thoſe given to the proprietors of Maryland or of Carolina, will perceive a prodigious inferiority. Relying on the greatneſs of his connexion, he ſeems to have been little ſolicitous to procure the royal privileges conferred on them: And while, as counts-palatine, they exerciſed every act of government in their own names, becauſe they were inveſted with the ample powers poſſeſſed by the prætors of the Roman provinces, he ruled his territory in

in the name of the king. Scanty, however, as his real juriſdiction was, he conceived he might confer it on others. Yet the law of England did not conſider the government of a great province of the empire as a perſonal truſt, as a ſpecies of property ſubject to every act of ownerſhip, which, like every other eſtate, is ſubject to alienation. And though the proprietaries were not diſpoſed to acknowledge the truth of this obſervation, becauſe it would have mortified their vanity, they ſadly felt the force of it from the eſtabliſhment to the extinction of their power. The miniſters of England, during the reigns of William and Anne, derided an authority, which appeared to them founded in imprudence, and ſupported by no principle of Engliſh law.

Being thus, however, gratified in what was the ruling paſſion of the times, in the acquiſition of American territory, becauſe the ardour of men had aſſumed a new direction, Berkeley and Carteret, who were already proprietors of Carolina, began ſoon after to promote their views by the ſettlement of a colony, to exert their powers by the eſtabliſhment of government. In order to promote the ſpirit of emigration to a country almoſt deſtitute of inhabitants, at a time when it required no additional incentive, in February, 1665, they offered various privileges to planters. It was now eſtabliſhed as a fundamental principle, without which the whole had been faulty, "that all vacant territory ſhall be purchaſed "for their uſe, of the Aborigines," whoſe rights were reſpected, becauſe they derived them from nature. As a bounty to thoſe who ſettled in New-Jerſey before the year 1685, eighty acres of land were offered to each, at a quit-rent of a penny an acre; the payment of which, however, was not to commence till March, 1670. Acquainted with the human heart, and inſtructed in Engliſh juriſprudence, they declared, that the province ſhould be ruled only by laws made by an aſſembly in which the people were repreſented: Reſerving to themſelves the whole executive power. As they deemed the quit-rents their private eſtate, it was at the ſame time declared, that all public expences ſhould be diſcharged by general contribution. Such was the liberal conſtitution which the wiſdom of the proprietaries eſtabliſhed for New-Jerſey. As new immunities were conferred, or the old explained by future proclamations, they

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were denominated by the people *the laws of conceſſions*, which being conſidered as their *great charter*, were deemed by them of higher authority than even acts of aſſembly, becauſe the former were held ſacred and unalterable, the latter might be repealed. Philip Carteret was not long after appointed governor, to execute the whole.[2] In their preſent vehemence of expectation, the proprietaries, with a blindneſs mortifying to the pride of men, ſaw not future diſappointment and vexation, from the difficulty of an enterprize in which none but enthuſiaſts ſhould ever engage.

In the mean time Nichols, the conqueror of New-Netherlands, as deputy-governor, took poſſeſſion of the whole, unconſcious of the rights of Berkeley and Carteret, till November, 1665. During this interval, he gave permiſſion to various perſons to acquire lands of the aboriginal proprietors, within New-Jerſey, in conformity to the policy which he had adopted for all. And three ſmall townſhips were immediately formed, by emigrants, chiefly from Long-Iſland, who laid the foundation of Elizabeth-Town, Woodbridge, and Piſcataway. This conduct, and theſe meaſures, gave riſe to diſputes at that time, which laſted half a century, and ſo long diſturbed its repoſe, either with regard to the property of the ſoil between thoſe purchaſers and the proprietors, or the claims of New-York, that reſigned its juriſdiction unwillingly. He remonſtrated againſt the impolicy of his maſter, in thus creating diviſions, where he ought to have conjoined, but to no purpoſe. And he deplored feelingly, the loſs of a territory, to which he gave the name of Albania, which was ſo remarkable for the fertility of its ſoil, the commodiouſneſs of its rivers, the richneſs of its minerals. He foretold what really happened, what ought to teach a leſſon of prudence to others, that the ſettlement of a deſert would coſt the proprietors an immenſe ſum before it yielded a penny, and would only become an eſtate "to the children of their children."[3]

In the end of the year 1665, he reluctantly reſigned the government of New-Jerſey to Carteret, the governor, who took poſſeſſion of Elizabeth-town, the capital; conſiſting then of four families juſt ſettled in the wilderneſs. Here he ruled a few years in peace over a deſert, which filled gradually with people from the provinces of New-York and New-England,

England, who carried with them their peculiar religion, and eſtabliſhed their ancient uſages. But they encountered none of the diſaſters which had proved ſo fatal to other colonies, becauſe they ſettled in the vicinity of cultivated countries, which furniſhed them with food, and of New-York, whoſe commerce ſupplied them with all things: Yet this laſt circumſtance, however advantageous at preſent, proved at length equally pernicious, becauſe it has to this day prevented the riſe of a mart among themſelves to give life to their traffic. They naturally engaged in the ſame purſuits as their neighbours, in purchaſing peltry of the numerous little tribes, which then roved over the adjacent foreſt, in raiſing cattle and grain, which long ſupplied their inconſiderable wants. They never were diſturbed by wars with the Indians, becauſe all the ſmaller tribes were either ſubdued by the *Five nations*, or were over-awed by their power; who were themſelves influenced by the governors of New-York. And, owing to theſe cauſes, and to the ſalubrity of the climate, New-Jerſey became extremely deſirable, and was in thoſe days accounted by men of peculiar diſpoſitions as worthy of the name of *paradiſe*, becauſe *it had no lawyers, or phyſicians, or parſons.*[4] Yet the tranquillity of this place of felicity was at laſt interrupted by the approach of that dreaded day, when the payment of quit-rents was to commence. In order to evade the diſcharge of a duty which appeared intolerable to men who had never paid it before, they ſet up titles, derived from the original poſſeſſors, in oppoſition to thoſe of the proprietors, becauſe people, who determine to diſpute, never want pretences. Diſcontent, as uſual, ſoon ripened into inſurrection, when not timely allayed, which in due ſeaſon grew up to revolt. Diſowning the government of the proprietaries, in November, 1672, the inſurgents expelled Carteret, who had ruled them with approbation, ſince they did not complain of his miſconduct: And they appointed Carteret, a natural ſon of the proprietor, as governor in his place. But the conqueſt of the Dutch, in the ſubſequent year, gave them a fine opportunity of deciding on the merits of the conſtitution they had thrown away, and of the delegated rule of a government, as popular in name as in practice ſevere.[5]

When the treaty of London re-eſtabliſhed the peace which had been interrupted by an inglorious war, the duke of York appointed Andros his lieutenant

lieutenant over his territorities, extending from the weſtern bank of Connecticut to the farther ſhore of the Delaware, becauſe he deemed his former grant of New-Jerſey annulled by the conqueſt. The whole powers of government, as well legiſlative as executive, were inveſted in a governor and council; whereby a tyranny was eſtabliſhed here as at New-York. Dyer was at the ſame time appointed collector of "thoſe duties, "which, ſaid that prince, I have thought fit to eſtabliſh throughout my "territories:" [6] And Andros took poſſeſſion of his charge in November, 1674: Confirming the late proceedings of the Dutch, becauſe the law of nations had already declared them in force, and continuing the taxes impoſed by the conquerors, becauſe they ſupported his power. Though that prince had directed his counſel *to prepare a grant to Sir George Carteret* of the eaſtern half of the province, yet, as nothing was done in the ſubſequent January towards adjuſting his pretenſions, the governor was then inſtructed "to take care to keep things in the ſame poſture, "as to the duke's prerogative and profit, as they were in during his "predeceſſor's time." [7] For, when he recollected the ſalutary remonſtrances of Nichols againſt the disjunction of his province, he heſitated long, and at length ſacrificed his own intereſt and the proſperity of New-York to his fatal eſteem for Carteret. Mean-while, Lord Berkeley, offended, probably, with the late inſurgents, and diſſatisfied with an eſtate, which, as had been foretold, brought him neither profit nor honour, aſſigned his pretenſions to William Pen and his three aſſociates during the year 1674. But, as all parties ſoon perceived the diſadvantage of a joint property, they divided the province with Carteret, becauſe they deemed a ſeparate eſtate for the intereſt of every one: And now, for the firſt time, was the country formed into Eaſt and Weſt-Jerſey; the former was releaſed in July, 1676, by the aſſignees of Lord Berkeley to Carteret; and he in return conveyed to them the latter: The government of the laſt the duke retained as a dependency of New-York; the firſt was reſigned to this gentleman. [8] And here commenced a confuſion of juriſdiction, and an uncertainty of property, which long diſtracted the people, and at length ended in the annihilation of the rule of the proprietors.

Carteret, who had been expelled with ſo much outrage in 1672, once more returned to Eaſt-Jerſey in the beginning of 1675; and who was now kindly received by the inhabitants, becauſe they had felt the rigours of conqueſt, which had not been ſoftened by Andros. Having poſtponed the payment of quit-rents to a future day, and publiſhed new conceſſions with regard to the tenure of lands, tranquillity was once more reſtored. And from this time *all remained quiet*, as we are aſſured, [9] *and the rules of property were well obſerved.* Deſirous to promote the commercial intereſts of the colony, becauſe he perceived its neighbour growing great and rich by trade, Carteret began, in 1676, to clear out veſſels from Eaſt-Jerſey: But he was ſteadily oppoſed by Andros, who ſaw that it tended equally to ruin the commerce and to leſſen the cuſtoms of New-York, on which ſo much depended. The various taxes which were impoſed by the governor and council on the one province, in the year 1678, were at the ſame time extended to Jerſey. And it was in vain for Carteret to eſtabliſh here a free port, ſince the governor of New-York ſeized and condemned the veſſels trading thither; and, however unjuſt, this meaſure was deciſive, becauſe it was ſupported by ſuperior power, which ſo eaſily determines every controverſy. Informed of theſe diſputes, the duke of York was little inclined "to let go any of that prerogative which had been "always exerciſed over Jerſey," becauſe he was actuated by his natural principles, and becauſe, though thoſe ſeverities were at preſent meliorated in compliment to Carteret, yet it was feared that "favours might, at a "future day, be claimed as rights." [10] And the preſent apprehenſions were verified by future occurrences.

Mortified to be deprived of that power of government which Carteret enjoyed, the proprietors of Weſt-Jerſey had, in the mean time, unceaſingly begged the duke of York to be reſtored to the rights which they derived from his grant of 1664: Inſiſting to be exempted from the taxes before-mentioned, that their province ſhould be diſcharged from all future dependence on New-York. After various conſultations, their pretenſions were at length referred to that eminent lawyer, Sir William Jones, ſo renowned during thoſe days for his politics and connexions. He found

little

little difficulty in deciding, becauſe there really was none, " that as the " grant to Berkeley and Carteret had reſerved no profit or juriſdiction, " the legality of the taxes could not be defended." " In compliance with a determination, which had the moſt deciſive authority, becauſe he had previouſly agreed to be concluded by it, the duke without heſitation confirmed Weſt-Jerſey to the proprietors in Auguſt, 1680." [12] Thus, after being ſo long ruled as a conquered country, this province was reſtored to its former privileges: Thus were the inhabitants delivered from a grievance extremely diſſimilar to that of their poſterity, taxation by the mere prerogative of the prince. It had hitherto remained a deſert, becauſe men did not willingly reſort to a country, where, inſtead of acquiring new, they were deprived of their ancient, rights. Byllying, one of the proprietors, who had been very inſtrumental in procuring this advantageous change, was appointed firſt governor of Weſt-Jerſey. But it never acquired the appearance of a cultivated country till its populouſneſs was promoted by the overflowings of its neighbours; and it was overſhadowed by Penſylvania, which grew up with rapidity along its weſtern borders. [13] When the duke remembered his eſteem for Sir George Carteret, he thought it but a proper tribute to his memory to confer on his ſon the ſame favour which he had granted to ſtrangers: And in September, 1680, he releaſed therefore to him his pretenſions over Eaſt-Jerſey. [14] Notice of theſe grants was immediately communicated to Andros for his future government. [15] But, whatever ſatisfaction the proprietors may have derived from their ſucceſs, theſe tranſactions were deplored by New-York *as the certain loſs of its trade*, and by others *as the deſtruction of its revenue*. And the corporation of this city remonſtrated, but to no purpoſe, againſt what it dreaded as the greateſt of evils, though the real cauſe of an event which it received as the greateſt of bleſſings. [16] For, the deciſive opinion of Jones, and the ſubſequent independence of the Jerſeys, were aſſuredly the principal cauſes of the introduction of an aſſembly; becauſe it was foreſeen, that, had the duke even an indiſputable right to impoſe cuſtoms on New-York, the exertion of it would only drive people acroſs the Hudſon to the neighbouring colony. None of the parties reflected, " that it is impoſſible to ruin a people animated

" by the commercial principle, whoſe diligence and œconomy remain un-
" impaired."

The ſpirit of diſcord, which had once diſturbed the repoſe of Eaſt-Jerſey, ſeems to have been never perfectly allayed, becauſe former cauſes continued. And the effects of them were no longer ſeen in the field, but heard in the ſenate. When the aſſembly convened at Elizabeth-town, in October, 1681, a violent diſſention commenced between the governor and council on the one ſide, and the repreſentatives on the other; who differed extremely, whether " the late grant from the duke of York to
" the proprietor ought to be conſidered as the foundation of their go-
" vernment." The detail of what was once intereſting, like controverſies of greater magnitude, is now no longer ſo. Conferences enſued to little purpoſe, when both ſides were equally pertinacious. The deputies reſolved: " That the people were not obliged to conform to any other
" grant of privileges than that of 1665, which ought to be literally con-
" ſtrued." The council inſiſted in vain: That the proprietors " had
" expreſſly reſerved a right of alteration." To put an end to fruitleſs altercation, the governor diſſolved the aſſembly. But the deputies proteſted againſt a meaſure ſo fatal to their power, which they inſiſted was inconſiſtent with his commiſſion and inſtructions.[17] Such is a ſpecimen of the conteſts of New-Jerſey. Men, connected with neither party, remarked; that when jealouſy has ſhed her baneful influence on a people, it is eaſy to find a ſubject for contention. As the ſame cauſes remained, ſimilar diſputes continued long to embitter the private enjoyments of the inhabitants, to diſturb their public affairs.

Offended with a province, which he could neither pleaſe nor govern, Carteret transferred his rights in February, 1682, to William Pen and eleven aſſociates of the ſame religion. Theſe men, immediately conveyed one half of their intereſt to the earl of Perth and eleven others;[18] becauſe they wiſhed for aid in the arduous taſk of peopling and ruling a diſtant colony. Deſirous rather to hold the province by an immediate charter from the duke of York than under their purchaſe, becauſe they doubted the validity of the title, theſe proprietors ſucceſsfully ſolicited a new patent. In March, 1683, ſuch a grant was conferred on the earl of

Perth

Perth and others, as had been lately paſſed to Carteret. [19] Thus the property of the ſoil of Eaſt-Jerſey became inveſted in owners of different kinds; in the general proprietors; in the purchaſers under them; in claimants under patents, and from Indian purchaſes. What a fruitful ſeed-plot of future litigation was here ſown in a colony, which once conſidered the abſence of lawyers as the greateſt felicity! Yet we ought naturally to expect the future prevalence of concord in a country, which was now honoured with Robert Barclay for its governor, whoſe writings adorned while they apologized for the tenets of a ſect, the fundamental principles of which is peace. Charles II. at the ſame time tranſmitted a letter to the governor, the council, and inhabitants, of this province; ſtating the title of the proprietors to the ſoil and juriſdiction, and requiring all to yield obedience to their government and the laws. [20]

Though oppreſſion fell not heavy on the people, ſo as to interrupt their purſuits, the Jerſeys did not enjoy perfect tranquillity, owing chiefly to the claims of a more powerful neighbour. It was to little purpoſe to declare them independent of New-York if ſhe ſtill claimed and exerciſed real juriſdiction. When, ſubſequent to the year 1683, her aſſembly was introduced, it extended the ſame taxes to them as it had eſtabliſhed for its conſtituents, though it ſeems now impoſſible to diſcover by what principle ſuch a meaſure could be defended, except by power. The governors of New-York conſtantly repreſented the great inconvenience of having two diſtinct governments upon one river, and ſolicited the re-annexation of the Jerſeys, notwithſtanding the remonſtrances of the proprietors, [21] who did not foreſee the vexations which afterwards enſued. Here they did not yet enjoy the benefit of a port of entry, becauſe no cuſtom-houſe was eſtabliſhed: And the collector of New-York continued to exerciſe over them his former authority under his ancient commiſſion. Being oppoſed in the diſcharge of his duty, he complained, in June, 1685, to the commiſſioners of the cuſtoms; "that, when he pro-"ſecuted veſſels, the juries found their verdicts againſt the moſt undoubt-"ed facts." [22] The miniſters of England, to whom this complaint was referred, inſtantly ordered a writ of quo-warranto to iſſue, with a promptitude which ſhewed that they only wiſhed for a pretence to execute what they

they had already predetermined. And, in April, 1686, they commanded the attorney-general to profecute writs againſt both Eaſt and Weſt Jerſey with effect: Aſſigning a reaſon, which evinces the extent of their views; "that it was of great prejudice in the plantations and to the cuſ-"toms here, if ſuch abuſes ſhould be any longer ſuffered in a country "which ought to be more dependent on his majeſty."[23] The proprietors of Eaſt-Jerſey, feeling the blow ſtruck at their own conſequence and at the proſperity of their colony, repreſented to James: That they had not received this province as a benevolence, ſince they had paid for it twelve thouſand pounds; neither would they have been concerned in it had they not obtained the king's confirmation and aſſurance of protection; that they had already ſent thither ſeveral hundreds of people from Scotland; and they were willing to propoſe to the aſſembly of Jerſey to impoſe the ſame taxes there as were then paid at New-York: They prayed, that their province might be only annexed to Weſt-Jerſey, over which the king might name a governor from among the proprietors; that juſtice might be adminiſtered within the province, with an appeal only to England; and that "an officer might be appointed, at Perth-"Amboy, to collect the cuſtoms, to cauſe the acts of navigation to be "executed."[24] But, of all that was aſked with ſo much anxiety, the laſt only was granted, becauſe it was a propoſal that did not militate againſt the mighty project which was then in contemplation. And an order was tranſmitted to the governor of New-York, in May, 1687, "to "permit veſſels to paſs, without interruption, to Eaſt-Jerſey, paying "the ſame cuſtoms as at New-York." The Jerſeys were not long after annexed to New-England. In order to evince their loyalty and their inclinations to facilitate the king's meaſures, the proprietors of Eaſt-Jerſey made a formal ſurrender of their patent, which was inſtantly accepted: Praying only for a new grant, ſecuring their title to the ſoil.[25] But, before a requeſt ſo reaſonable could be granted, a revolution enſued, which transferred the allegiance of proprietors and people to new ſovereigns without their conſent. From June, 1689, to Auguſt, 1692, the Jerſeys were left without a government, becauſe that of Andros had been overthrown and none was eſtabliſhed in its place. Partly owing to this

this ſingular circumſtance, but more to the doubts that were juſtly entertained of the authority of the proprietors, diſtractions then enſued, which, during ten years, continued to inflict the ſevereſt wounds on a miſerable country, which have been therefore emphatically ſtiled, by hiſtorians, *the revolutions*.[26]

Such is the hiſtory of an inconſiderable province, the one-fourth of which was not then cultivated, was not then purchaſed of the native owners. Weſt-Jerſey remained one general waſte: Eaſt-Jerſey had been already divided into five counties. But what muſt have been the population of a country which did not annually conſume the value of one thouſand pounds of European manufactures! What muſt have been the extent of its commerce, when three ſhips, trading in its ports in one year, were taken notice of as conſiderable! The firſt emigrants thither were the immediate deſcendants of the men who paſſed the Sound from Connecticut, and ſettled on Long-iſland: And in the principles, civil and religious, of ſuch a people we may eaſily trace the true cauſe of that turbulence for which the Jerſeys were ſo long remarkable. When the colony was transferred to Pen, Barclay, and other Quakers, who found it convenient to place at their head Lord Perth and other noblemen of Scotland, becauſe they wiſhed for patrons, conſiderable numbers removed thither from Scotland; "where, as we are aſſured, they were as "much perſecuted for their religion as the Engliſh." Nor were the tenets of the former ſettlers much improved by the intercourſe of thoſe who had been bred amid the commotions of that kingdom, during the reign of Charles II. Yet the whole ſeems to have been admirably qualified for coloniſts, becauſe their peculiar religion and habits neceſſarily promoted diligence and œconomy as the greateſt of virtues. As they emigrated without a royal charter they have not been able to derive from this ſource any peculiar privileges. And, when they claim therefore excluſive immunities, they muſt neceſſarily deduce them from this, that they were, as Engliſh ſubjects reſiding in a ſubordinate territory of the crown, entitled to Engliſh liberties. Such they have been always conſidered, though they have not always enjoyed their rights. But their obedience has not been generally equal, in extent and uniformity, to the protection they have at all times experienced.[27]

AUTHORITIES

AUTHORITIES AND NOTES.

[1] See the grants, in the Record, Plant. Off. titled, Proprieties, A. p. 113-18. — [2] Smith's Hiſt. N. York Pap. p. 11; Brit. Emp. in Amer. 1 v. p. 134; Dougl. Sum. 2 v. p. 274-9. — [3] The ſubjoined *extract of a letter, dated in November*, 1685, *from Colonel Nichols to the duke of York*, will throw conſiderable light on a portion of hiſtory, the obſcurity of which has long perplexed lawyers and hiſtorians. — From N. York Pap. 1 v. p. 7.

" I muſt now deſcend to the particular occaſion of giving your royal highneſs this trouble, wherein my Lord Berkeley and Sir George Carteret are concerned; who, I know alſo, will be ſo juſt to me as to have me excuſed for manifeſting clearly my knowledge to your royal highneſs. About ten days paſt, Captain Bollan ſhewed me a letter from my Lord Berkeley and Sir George Carteret, and therewith a grant from your royal highneſs to them, for all the lands to the weſt of Hudſon's river, as more fully may appear in the ſaid grant; wherein is comprehended all the improvable part of your royal highneſs's patent, and capable to receive twenty times more people than Long-iſland and all the remaining tracts, in reſpect not only to the quantity of the land, but to the ſea-coaſt and Delaware river, the fertility of the ſoil, the neighbourhood to Hudſon's river, and laſtly the fair hopes of rich mines, to the utter diſcouragement of any that ſhall deſire to live under your royal highneſs's protection. In ſhort, I hold myſelf obliged to give your royal highneſs this account upon certain knowledge, having exactly conſidered and preferred the advance of your royal highneſs's reputation in theſe parts above all conſiderations or obligations whatſoever; and, for my boldneſs, I can at laſt but beg pardon. Neither can I ſuppoſe that my Lord Berkeley or Sir George Carteret knew how prejudicial ſuch a grant would prove to your royal highneſs, but muſt charge it upon Captain Scot, who was born to work miſchief, as far as he is credited or his parts ſerve him. This Scot, it ſeems, aimed at the ſame patent which your royal highneſs hath, and has given out words that he had injury done him by your royal highneſs; whereupon

whereupon he contrived and betrayed my Lord Berkeley and Sir George Carteret into a deſign (contrary to their knowledge) of ruining all the hopes of increaſe in this territory, which he hath fully completed, unleſs your royal highneſs take farther order herein. Upon this tract of land ſeveral new purchaſes are made from the Indians ſince my coming, and three towns beginning. I gave it the name of Albania, lying to the weſt of Hudſon's river, and to Long-iſland the name of Yorkſhire, as to this place the name of New-York, to comprehend all the titles of your royal highneſs. Far be it from me to aggravate any thing beyond the bounds of a faithful ſervant; for, when it may conduce moſt for your royal highneſs's ſervice, I ſhall as freely ſurrender up all parts to your royal highneſs's pleaſure as it becomes me to do. I preſume farther to propoſe a better and more entire tract of land, worthy of great conſideration, to my Lord Berkeley and Sir George Carteret, which is that part of Delaware river which is reduced from the Dutch, if it is not already diſpoſed; if ſo, then that my Lord Berkeley and Sir George Carteret may have a hundred thouſand acres along the ſea-coaſt, which is a moſt noble tract of land; but it will coſt them 20,000*l.* before it will yield them a penny, and their children's children may reap the profit. Great has been the abuſe of falſe reports, whereof I am now fully ſatisfied, and yet I hope to render a ſatisfactory account to your royal highneſs, by word of mouth, when it ſhall pleaſe you to give me liberty, and that your affairs here are upon ſuch a foundation as will not be ſhaken by my abſence."

[4] Brit. Emp. Amer. 1 v. p. 144. — [5] Dougl. Sum. 2 v. p. 268-9-71. — [6] See his commiſſion and inſtructions, by which a great variety of taxes were impoſed on that immenſe region by the ſole authority of the duke of York; and the collector's commiſſion, by which he was empowered to collect them. N. York Ent. 1 v. p. 2-6. — [7] Ib. p. 13-17. — [8] Dougl. Sum. 2 v. p. 272-3. — [9] Ib. p. 169. — [10] N. York Ent. 1 v. p. 23-28-32. — [11] *The opinion of Sir William Jones* is ſubjoined, becauſe it ſhews the cautious ſentiments of an eminent lawyer, during thoſe days, with regard to taxation by prerogative alone. — From N. York Ent. 1 v. p. 33.

" I do hereby humbly certify, that, having heard what hath been inſiſted on for his royal highneſs, to make good the legality of the demand of five per cent. from the inhabitants of New-Jerſey, I am not ſatisfied (by any thing I have yet heard) that the duke can demand that or any other duty from the inhabitants of thoſe lands. And that which makes the caſe the ſtronger againſt his royal highneſs is, that thoſe inhabitants claim under a grant from his royal highneſs to the Lord Berkeley and Sir George Carteret; in which grant there is no reſervation of any profit, or ſo much as juriſdiction.

WM JONES."

REMARK. The inhabitants being thus freed from taxes, levied by prerogative, were equally aggrieved, during the reign of William, by the impoſition of duties by the aſſembly of New-York, which could be as little ſupported by any principle of equity or law. In June, 1697, the proprietors, therefore, applied to Sir John Hawles and Sir Creſwell Levinz for their advice on this ſubject; who both concurred in opinion, " that no cuſtoms could be impoſed on the people of Jerſeys, otherwiſe than by act of parliament or their own aſſembly." — Rec. Prop. A. 158.

[12] N. York Ent. 1 v. p. 33-4. — [13] Brit. Emp. Am. 1 v. p. 147. — [14] N. York Ent. 1 v. p. 33. — [15] The following *letter from Sir John Werden, ſecretary to the duke of York, to Sir Edmond Andros*, ſhews the embarraſſments of the prince, and the nature of the notice ſent to the governor of New-York of the intereſting change mentioned in the text. — From N. York Ent. 1 v. p. 34.

" Sir, St. James's, 6 Nov. 1680.

I preſume you will have heard already that his royal highneſs, in obedience to his majeſty's commands, is gone again into Scotland; but that, before he went, he was pleaſed (upon ſuch advice as he relied on) to confirm and re-leaſe to the proprietors of both moieties of the New-Jerſeys all their and his right to any thing (beſides the rent reſerved) which heretofore may have been doubtful, whether as to government or public duties, in or upon the places within the grants. And, though I believe the deeds themſelves reſpectively, when produced to you, will enough ſatisfy you in this matter, yet I thought it convenient herein to give you notice

notice of them, to prevent as much as in me lies any doubt of the validity thereof, or the having been ſurreptitiouſly obtained, or any other inconvenience that may happen either to you or to the proprietors, for want of ſuch intimation. I am, &c."

[16] N. York Ent. 1 v. p. 37; Journ. Plant. Off. 5 v. p. 162. — [17] N. York Pap. 1 v. p. 249. — [18] Dougl. Sum. 2 v. p. 272-3. — [19] N. York Ent. 1 v. p. 40. — [30] N. York Pap. D. N° 33. — [21] The two ſubjoined papers ſhew the nature of the diſputes in which New-York and the Jerſeys were then engaged. — From N. York Pap. p. 308.

A remonſtrance from three of the proprietors of Eaſt-Jerſey to the governor of New-York. — They blame him for his treatment of their colony; they boaſt of their connexion with his maſter; who abhors doing any thing unjuſt.

" Sir,

We did promiſe ourſelves in you a good and kind neighbour, both judging you would have ſo inclined to a colony wherein we are ſo much concerned, and that the regard you have to your maſter's honour and intereſt would have obliged you to it; conſidering we are ſuch as have the happineſs to claim an intereſt in his favour. We have diſcourſed with his commiſſioners, at London, of thoſe things that were by you propoſed in relation to the bringing our colony under the government of New-York, and doubt not but we have convinced them of the reaſon which induced us not to yield to ſuch a propoſal; and we doubt not both the duke and they are fully convinced of our right in every reſpect, both of government, ports, and harbours, free trade, and navigation: And, having converſed with the duke, we found him very juſt, and to abhor the thoughts of allowing any thing to be done contrary to what he hath paſt under his hand and ſeal: And we perſuade ourſelves you will lay aſide all thoughts of attempting what may reflect upon the juſtice or honour of your maſter, or may give us juſt reaſon to complain; ſince there ſhall be nothing wanting on our part that may tend to any advantageous correſpondence; which, as we expect from you, ſo ſhall

be ſeriouſly recommended by us to our agents, and always entertained by your aſſured friends and ſervants,

Edinburgh, 22d Auguſt, 1684.

Perth,
Geo. M'Kenzie,
Drummond."

Colonel Dongan's ſpirited anſwer, which probably contributed to procure his recal, through the influence of his opponents with James II.

" My honoured lord,

I had the honour of a letter from you and ſome other proprietors of Eaſt-Jerſey, and am mightily ſurpriſed to find that I am accuſed to act ſome things to the diſadvantage of your colony and diſhonour of my maſter; did I know my accuſers and the crime objected I could be better able to anſwer. Your lordſhip may believe me, I have acted nothing unjuſtly to the prejudice of your agents or people; ſo far from it, that, when I found them take wrong meaſures, I adviſed them for the beſt, as I thought, both for the proprietors and people: What complaints they make of me I know not, but am ſure the people cry out very much againſt them. What I wrote to his royal highneſs and his commiſſioners, as his ſervant, I was certainly obliged to, and to give my opinion what is convenient for the intereſt of this province: And, I believe, had your lordſhip been in my ſtation, you would have repreſented the great inconveniency of having two diſtinct governments upon one river; yours having the advantage of being ſome leagues nearer to the ſea than we are. Your agents have diſperſed printed papers, to the diſturbance of the inhabitants of Staten-iſland, which hath been in poſſeſſion of his royal highneſs above twenty years, (except the little time the Dutch had it,) purchaſed by governor Lovelace, of the Indians, in the time of Sir George Carteret, without any pretences, till your agents made claim of it: It is peopled with above two hundred families. To convince your lordſhip that I have done nothing amiſs in writing how convenient it would be to regain Eaſt-Jerſey, I do aſſure you that ſome of the proprietors themſelves are of the ſame opinion, and have told me ſo: And, to ſhew your lordſhip how favourably I act, I am informed that, in the time

time of other governors, ſhips that came to Amboy made entry at New-York; yet, during my time, ſeveral ſhips have gone thither, and I have deſired no ſuch thing, nor will I, till I am aſſured of his royal highneſs's pleaſure. It ſhall not be my fault if there be not an advantageous correſpondence. I had almoſt forgot to tell your lordſhip, that to the end a fair correſpondence may be preſerved between theſe governments, in an act lately made by the aſſembly, amongſt other things, almoſt equal privileges were allowed to Eaſt-Jerſey with this province; and all the thanks I have is to be miſrepreſented, who will always endeavour to prove that I am

New-York, THO. DONGAN."
13th February, 1684-5.

[22] N. Jerſey Pap. p. 67-9. — [23] Jour. Plant. Off. 5 v. 162-3-257. — [24] N. Jerſey Pap. p. 73-83. — [25] Ib. 95. — [26] Dougl. Sum. 2 v. p. 192. — [27] N. York Pap. 380; Brit. Emp. Am. 1 v. 143. — The aſſembly which convened at Perth-Amboy, in May, 1687, granted a tax of a penny in the pound on eſtates, to enable the governor of New-York to repel the threatened invaſion of the Canadians, "becauſe the king had "inſtructed him to call on other provinces for aid, in caſe he was in-"vaded." From this law it appears that Eaſt-Jerſey had been then divided into five counties; that lands were rated at 10*l.* a hundred acres; an ox, four years old, at 4*l.* a cow, of three years, at 3*l.* horſes, riſing three years, 3*l.* Wheat, 4*s.* a buſhel; Indian corn, 2*s.* a buſhel; butter, 6*d.* a lb. pork, 2½*d.* a lb. tobacco, 2½*d.* a lb. and every male inhabitant, of ſixteen and upwards, at 10*d.* — See the act, in N. Jerſey Pap. p. 89. — And from theſe prices, though the nature of the money is not mentioned, the politician may form ſome judgement with regard to the quantity at market of thoſe commodities, the demand for them, the nature of trade, the extent of taxation.

CHAP.

CHAP. XXI.

When a colony was first planted on Delaware river discussed. — A sketch of its history. — William Pen petitions for a grant of American territory. — His charter. — Observations. — First emigration under Markham. — His negotiation with Lord Baltimore. — The frame of government of Pensylvania. — Reflections. — Pen obtains a grant of the Delaware colony. — He arrives in the province. — His conduct. — The first assembly. — Its proceedings. — His conference with Lord Baltimore. — He changes the frame of government. — The second assembly. — He returns to England. — His disputes with Lord Baltimore finally settled. — Distractions arise. — A deputy-governor appointed. — His contentions with the assembly. — Remarks. — Conduct of the province at the Revolution.

AT what precise period of time the fruitful banks of South-river of the Dutch, of Delaware of the English, were first planted by Europeans, was once a question of importance, because the fate of provinces depended on it; though, during the present times, it has become an inquiry of mere speculation. Curiosity, however, cannot now be perfectly gratified. If we may credit the relations of a disinterested man, who travelled thither, no settlement existed during the year 1620. While Harvey, the governor of Virginia, in March, 1631-2, recognized "the "adjoining plantations of the Dutch," he considered the 41st degree of north latitude as the northern boundary of that most ancient dominion; which would carry it up almost to New-Amsterdam of the Hollanders, to New-York of the English. And thus the literal import of the expression, *adjoining*, may be naturally gratified, without contradicting records or doing violence to probability. The foregoing history has shewn that the Dutch colony, which commenced long after a *trading-house* had been built, extended a little beyond the island of Mana-hattans itself in 1633. And Harvey, who had made discoveries by order of his sovereign, during the years 1627-8-9, "not only in Chesapeake-bay, but "in every part of his government," could not be ignorant of the precise

ciſe extent of it.[1] Thus, though various Europeans may have then trafficked in Delaware, their plantations had not embelliſhed her margin probably during the year 1632. Yet, after receiving proofs and examining the queſtion, the lords of the committee of colonies, at the diſtance of half a century, reſolved: "That the weſtern ſhore of the "Delaware had been planted by Chriſtians before and at the date of "Lord Baltimore's patent." The authority is high, perhaps deciſive, and would have forced conviction on the moſt incredulous, were it not that they had been too much influenced by the ſuggeſtions of an intereſted man, that the evidence which convinced them does not remain for the examination of the preſent times. But it was a poſſeſſion formed on the territories of England, either of Virginia or New-England; and her miniſters, with an inconſiſtence which ſhews how little they were governed by true policy, admitted, by their deciſion, the rectitude of it.[2] When ſtateſmen are guided by the influence of preſent paſſion, rather than by uniformity of principle, they generally deviate from the intereſt of their country, involving themſelves and the world.

If, from the period of conjecture, we turn however to the authentic notices of records, we ſhall diſcover the commencement of the occupancy of the Swedes and Dutch. Scarcely had a Swediſh factory, conducted by Minuitz, reared, near the confluence of Delaware, on her eaſtern banks, habitations for ſhelter, when Kieft, the governor of New-Netherlands, tranſmitted a remonſtrance, in May, 1638. He aſſerted, with a confidence which ſhews at leaſt his own ſincerity: "That the "whole *South river* had been in the Dutch poſſeſſion *many years*, above "and below beſet with forts, and ſealed with their blood."[3] But neither his aſſertions nor his threats were otherwiſe regarded, by Minuitz, than as they always are by the wiſe and brave. He retained poſſeſſion, though his operations continued extremely feeble, becauſe they were unſupported. And, at the treaty of Stockholm, concluded in September, 1640, Sweden and Holland prudently paſſed over in ſilence colonial ſquabbles and American territory.[4] For the pretenſions of neither party could have been ſupported by fair and accurate diſcuſſion.

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An emigration from Maryland not long after took poſſeſſion of the margin of the Dutch *Schuyl-kill*, the *Hiding-creek* of the Engliſh. But, when the governor of New-Netherlands heard of what he deemed intruſion, he ſent Alpendam, from Mana-hattans, with two ſloops, in May, 1642; who eaſily diſpoſſeſſed coloniſts that were little prepared to reſiſt him.[5] The weakneſs of Maryland, which had been ſettled only nine years before, the diſtractions of the parent country, involved in civil war, prevented the effects of that reſentment which a great nation will always feel when inſult is offered to her ſovereignty.

When the Dutch recollected the frequency of the murders committed on their traders by the Indians, during their fits of ebriety, the continued invaſion of what they deemed their territory by the Engliſh and Swedes, they determined to build a fort, in order to ſecure both. During the year 1651 they erected a trading-houſe, rather than a fortification, on a low point of land, which commanded the river, near which the preſent Newcaſtle was built. And here Hudde was left to rule and to traffic. In July, 1651, he purchaſed, from the Minquaas, the lands on the weſtern ſhore of the Delaware, from Chriſtiana-creek to the river of Bompthook; which is the moſt early Indian purchaſe made here by the Dutch: And, from this tranſaction alone, we may infer, that no colony had hitherto been ſettled, that the poſſeſſion of all parties was recent and unſubſtantial. But he did not continue long to exerciſe his feeble authority. The Swedes had not only obſerved this conduct of their rivals, but proteſted againſt what was conſidered as injurious to them; though he did not regard much what had been ſo often done before, without bloodſhed, without conſequence. And, during the ſubſequent year, a veſſel of conſiderable force, with a few troops on-board, conducted by Riſingh, anchored near the fort; of which he inſtantly acquired poſſeſſion by ſtratagem rather than by force, becauſe his attack was unexpected, ſince his power was derided. Agreeably to the practice of conquerors, he named what his ſuperior dexterity had acquired Fort Caſimir, which he ſoon ſtrengthened and enlarged. And he ſoon after erected, on the ſame river, five miles higher, Fort Chriſtiana, in honour of his queen. Mean-while the government of Maryland knew little of theſe revolutions

of

of unimportant ſovereignty, except from rumour, becauſe no communications had been yet formed from the ſource of Cheſapeake to the bay of Delaware. And it could not oppoſe what it did not certainly know. The Weſt-India company felt the blow ſtruck at its intereſt and its power, but was too feeble to reſent it in proportion to its feelings, becauſe it was poor. And it applied for aid to the city of Amſterdam, which equally abounded in wealth. Invigorated by this powerful ally, the company ſent an armament from Mana-hattans, under the command of Stuyveſant, the governor; who, in September, 1655, eaſily acquired poſſeſſion of the two forts, and compelled the Swediſh coloniſts to ſubmit to the government of the ſtates-general. The facility of his conqueſt ſhews the weakneſs of his opponents; the paucity of the Swedes demonſtrates the imbecillity of their colony. The fortreſs of Caſimir was now denominated Newer-Amſtel by the Dutch, by the Engliſh Newcaſtle. And a village naturally aroſe under its walls, becauſe the inhabitants derived protection from it; and the Dutch coloniſts followed the cuſtom of their countrymen, who delight to reſide in towns. A ſubordinate government was here eſtabliſhed, which was guided by a lieutenant-governor, under the command of the director-general of New-Netherlands. But neither this little colony nor his limited authority extended beyond the limits of the Indian ſale before-mentioned. And, in purſuance of orders which he received in 1658, he purchaſed of the natives, in the ſubſequent year, the lands around Cape Henlopen, in order to raiſe a fortification and to extend the ſettlements. Theſe trivial notices ſufficiently demonſtrate the real commencement of a permanent plantation on Delaware, and the littleneſs of its extent ſo late as the Reſtoration, thirty years after it has been ſaid to have begun. The evidence of records ſhews how little are to be relied on the aſſertions of intereſt or the ſtories of tradition.

Informed at length of all theſe tranſactions, the governor of Maryland was rouſed from his late inactivity in proportion as he perceived that the intereſt of the proprietary was affected: He diſpatched Colonel Uty and other commiſſioners to Newcaſtle in the year 1659, in order to ſhew Lord Baltimore's right, to claim the country to the ſouthward of the for-

tieth degree of north latitude, to warn the Dutch to retire to the northward of it. But the requiſitions of theſe men ſeem not to have been much attended to, becauſe the power of Maryland was not dreaded. And this nobleman ſent Neal, as his agent, to Holland, during the ſubſequent year, to make ſimilar demands, and to proteſt againſt the conduct of the Weſt-India company. Though that body, however, refuſed his requeſts, it ſent private orders to its officers to withdraw to the northward of Lord Baltimore's boundary, in order to prevent the threatened hoſtilities. After thoſe affected delays and contradictory conduct, which are natural to men who are obliged to execute diſagreeable commands, the Dutch actually retired, during the year 1662, from the country around Cape Henlopen. And Charles Calvert, the ſon of the proprietary, immediately occupied what his opponents had relinquiſhed.[7] Yet they retained poſſeſſion of Newcaſtle and the higher parts of the country till October, 1664; when the whole ſubmitted to Sir Robert Car. He admitted the Dutch coloniſts, by a formal capitulation, to the honourable rank of Engliſh ſubjects, who conſequently acquired, by their ſubjection, the invaluable rights of Engliſhmen.[8] But what muſt have been the populouſneſs of a colony, which, twenty years after, when it had acquired additional numbers from its neighbours, contained oniy three thouſand perſons? From its conqueſt, the Delaware plantation, of which Newcaſtle was the capital, was annexed to New-York as an appendage, becauſe it had been long ſubordinate to her. And, till the period of final ſeparation, it underwent the various viciſſitudes of its ſuperior, partaking of her fortunes, both good and evil; feeling no other diſturbance than what aroſe from the claims of Lord Baltimore, which were rejected without ceremony; from an inſurrection of the ancient coloniſts, which was eaſily ſuppreſſed, becauſe it was unprovoked. With New-Netherlands the duke of York aſſumed the government of this little territory in the ſame manner as of his other dominions, though without authority. For it ought to be remembered, that his grants extended only to the eaſtern margin of the Delaware, and the plantation beforementioned ſtretched in a narrow ſlip along her weſtern bank. It is a ſingular circumſtance in the hiſtory of this inconſiderable colony that it

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ſeems to have been at all times governed by uſurpers, becauſe their titles were defective.

In the mean time the renowned William Pen, the head of a conſiderable party, a man of great depth of underſtanding, attended by equal diſſimulation; of extreme intereſtedneſs, accompanied with inſatiable ambition; and of an addreſs in proportion to all theſe; engaged in coloniſation during an age when all men's minds were inflamed either with the deſire of emigration, becauſe they were unhappy in England, or with an anxiety to acquire diſtant territory, becauſe their ſovereign was profuſe of what had coſt him nothing. As an American adventurer, Pen firſt appeared at the head of the Quakers; who, during the year 1674, purchaſed the weſtern part of the Jerſeys of Lord Berkeley; who ſoon after bought of Carteret what remained. And, from this time, his active mind was extremely engaged not only in the adminiſtration of a country in which he was ſo deeply intereſted, but in acquiring knowledge of colonial affairs. It was on this occaſion that he received the moſt exact information of the country lying weſtward of the Delaware, which inflamed his ambition; while his diſſatisfaction with his numerous aſſociates incited a deſire to acquire a ſeparate eſtate.[9] And a man of his addreſs was little at a loſs for pretences or expedients.

In June, 1680, he preſented a petition to Charles II. ſtating not only his relationſhip to the late admiral, but that he was deprived of a debt, due from the crown, when the exchequer was ſhut up; praying, in compaſſion to the afflicted, for a grant of lands, lying northward of Maryland and weſtward of Delaware; and adding, that, by his intereſt, he ſhould be able to ſettle a province which might, in time, repay his claims.[10] His petition was immediately ſent to Werden, the duke of York's ſecretary, and to Lord Baltimore's agents; in order "that they "might report how far the petitioner's pretenſions may conſiſt with "their boundaries." Both agreed to the propoſals of Pen, provided "his patent might be ſo worded as not to affect the rights of others."[11] To every thing that was aſked of him he readily agreed, becauſe he knew the importance of conceſſion while he aſked for what might be extremely endangered by oppoſition. He had the art to procure not

only the conſent, but the recommendation, of the duke of York. And, in November, 1680, the ſketch of a patent, which he had chiefly copied from the charter of Maryland, was ſent to the attorney-general " for his opinion of it;" who not long after communicated his obſervations, " ſhewing the clauſes that are not agreeable to the laws here, though " they are in Lord Baltimore's patent."[13] After a conſiderable ſtruggle with the duke's commiſſioners, who inſiſted that Pen's ſouthern line ſhould run at leaſt twenty miles northward of Newcaſtle, his boundaries were at length adjuſted, ſo as to pleaſe both parties. And, in January, 1681, the committee of plantations requeſted that eminent ſtateſman and lawyer, North, chief-juſtice, " to take his patent into conſidera- " tion; to provide, by fit clauſes, that the ſovereignty of the king be re- " ſerved; that acts of parliament, concerning trade, and navigation, and " the cuſtoms, be duly obſerved; and, in general, that it be ſo drawn that " it may conſiſt with the king's intereſt and ſervice, and give ſufficient en- " couragement to ſettlers."[15] The charter ſhews that it had been corrected by the hand of a maſter. We ſhall probably hear no future hiſtorians ſpeak of it as " an hiſtorical phænomenon, that ſo excellent a ſet " of conſtitutions took their riſe from an arbitrary court and a bigotted " prince."[16] When we conſider the time at which it was granted, long after the acts of trade and revenue had been eſtabliſhed; its ſingular proviſions, which were aſſuredly ſettled after the greateſt conſideration by the moſt eminent lawyers and ſtateſmen; the diſputes in which the nation was then engaged with Maſſachuſets; the charter of Penſylvania[17] muſt be deemed an object of ſingular curioſity and of minute diſcuſſion.

In conſideration of " the merits of the father, and the good purpoſes of the ſon," in order " to extend the Engliſh empire," and to promote uſeful commodities, Charles II. granted to William Pen, as proprietary, in abſolute property, that immenſe region, bounded on the eaſt by the river Delaware, extending weſtward five degrees of longitude, ſtretching to the north from twelve miles northward of Newcaſtle to the three-and-fortieth degree of latitude, limited on the ſouth by a circle of twelve miles, drawn round Newcaſtle to the beginning of the fortieth degree of

of latitude. The whole was erected into a province, by the name of Penſylvania: Saving to the crown its ſovereignty and the allegiance of the proprietary and people. In order that the colony might increaſe by the multitude of people reſorting thither, liberty was given to ſubjects, thoſe only excepted who ſhould be ſpecially forbidden, to tranſport themſelves in ſuch ſhipping, "as by the laws of England they ought to uſe," with ſuch merchandiſes as they ſhould think proper, "ſaving the cuſ-"toms for the ſame, by any ſtatute due, or to be due;" to import the productions of the province into England, "but into no other country "whatſoever," and to export them thence within one year, paying ſuch duties as other ſubjects, and obſerving the acts of navigation. Pen was empowered to aſſemble the freemen, or their delegates, in ſuch form as he ſhould think proper, for raiſing money for the uſes of the colony, and for making uſeful laws, provided they ſhould not be contrary to thoſe of England or the rights of the kingdom. To the end that the proprietary, or the people, might not through inadvertence or deſign depart from that allegiance, which, by the laws of the realm, they *and all other ſubjects* owe to the crown, a duplicate of the acts of aſſembly was required to be tranſmitted within five years to the king in council; in order that, ſhould they be found inconſiſtent with the ſovereignty, or contrary to legal government, they might within ſix months be declared void. He was empowered to erect courts of juſtice, to hold plea of cauſes, civil and criminal; ſaving to every one the right of appeal to the king in council: And he was enabled to pardon crimes committed within his juriſdiction, treaſon and murder only excepted. It was required, that the rules for governing property, as well for deſcent of lands as for ſucceſſion of chattels, ſhall remain, according to the courſe of the laws of England, till changed by the aſſembly. The proprietary was empowered to conſtitute ports, for the convenience of commerce; provided, "that the officers "appointed by the commiſſioners of the cuſtoms ſhould be freely ad-"mitted." The aſſembly was authoriſed to aſſeſs reaſonable ſubſidies on the commodities loaded or unloaded in the harbours of the colony, which were granted to Pen; "ſaving to the crown ſuch cuſtoms, as by act of "parliament are or ſhall be appointed;" the word *are* referring to

thoſe already eſtabliſhed; the term *ſhall*, to thoſe that might be impoſed in future: And the whole diſtinguiſhing between the provincial revenue for local purpoſes and the parliamentary taxes for the uſes of the empire. He was required to appoint an agent to reſide in London, to anſwer for miſdemeanours or wilful neglect *againſt the acts of trade*; and, in caſe of failure, the government might be reſumed, ſaving the rights of the people. As incurſions might happen, he was empowered to train the inhabitants, to purſue the invaders by ſea and land; provided that no correſpondence ſhould be maintained with the enemies of the crown, that no war ſhould be made on any ſtate in amity. He was enabled to alien the ſoil to the coloniſts, who might hold their lands under his grants, notwithſtanding the ſtatute prohibiting ſuch ſubinfeudation. It was ſtipulated by the king, for himſelf and his ſucceſſors, "that no cuſtom, or "other contribution, ſhall be levied on the inhabitants or their eſtates, "unleſs by the conſent of the proprietary, or governor and aſſembly, *or by* "*act of parliament in England.*" [18] Yet the preciſion of this language did not preclude diſputation, becauſe ingenuity can eaſily frame objections at the command of intereſt or ambition. By the deſire of the biſhop of London,[19] it was ſtipulated, that, when twenty inhabitants ſhould requeſt a preacher to be ſent them, who ſhould be approved by him or his ſucceſſor, he ſhall be allowed to reſide without moleſtation. Should doubts ariſe, with regard to the true conſtruction of the charter, it was commanded, that an interpretation favourable to the proprietary ſhall always be made, provided that none ſhall be admitted, by which the allegiance due to the crown may ſuffer diminution.

Such is the ſubſtance of a grant, whereon has been eſtabliſhed the Penſylvanian government and laws, ſo highly celebrated for their moderation, their wiſdom, their excellent proviſions in favour of liberty. "It is remarkable, ſays their hiſtorian,[20] that ſuch an inſtrument, "penned with all the appearance of candour and ſimplicity imaginable, "and equally agreeable to law and reaſon, to the claims of the crown "and the rights of the ſubject, ſhould be the growth of an arbitrary "court." Perhaps, it is no leſs ſingular, that the national rights, the "authority of the laws and the ſupreme legiſlature, ſhould have been ſo

"carefully

" carefully attended to and preſerved." But, it is in the hiſtory of Maſſachuſets that we ſhall find this myſtery fully explained. Charles II. and his miniſters had been long deeply engaged in a contention with this colony, which had given them infinite vexation, and impreſſed both with the ſtrongeſt ſenſe of the inconveniences which they felt, to which they found it ſo difficult, if not impoſſible, to apply an effectual remedy. It was an anxiety to prevent the like diſputes and diſorders from ariſing in Penſylvania, which dictated the chief clauſes of her charter. The general court had deemed the acts of navigation of no force within its juriſdiction, till legalized by its own ordinance; but this grant carefully provided for a compliance with them, under the penalty of forfeiture: Acts had been made by that provincial legiſlature inconſiſtent with the laws and rights of the ſovereign ſtate; but this incongruity is here cautiouſly prohibited: The general court had coined money, and afterwards pleaded its ignorance as an excuſe; but, to prevent the dangers of miſconſtruction or deſign, all laws were required to be tranſmitted for approbation or diſſent, though this prudent proviſo anſwered little good practical purpoſe: A ſtanding agent was now required, becauſe that body had either refuſed, or delayed to appoint any, to anſwer the moſt urgent complaints: And, the rights of the church of England were now regarded, becauſe ſhe had been ſuppreſſed in Maſſachuſets. Like all the others, this charter, however, thus legal and reaſonable, is merely declaratory of the common law, when properly underſtood and properly applied; and every privilege conferred, or right reſerved, would have neceſſarily followed a colony, ſettled by Egliſh ſubjects, without a charter; becauſe, their immunities and duties adhere to them whereſoever they go. In New-York and the Jerſeys, the ſame privileges were enjoyed ſubſequent to the Revolution, as in Maryland, or Penſylvania. For, they all equally owed allegiance to the crown and obedience to the laws; in return, they were entitled to general protection and legal government. Yet there was in this no expreſs ſtipulation, as had been inſerted in all other colonial patents, " that the Penſylvanians and their deſcendants ſhould be " confidered as ſubjects born within the realm," becauſe the great

lawyers,

lawyers, who reviſed it, knew that ſuch declarations were nugatory, ſince they were inferred by law.

Mean-while the proprietary ſeems to have exerted his uſual addreſs and activity in procuring inhabitants for the wilderneſs which a tedious ſolicitation had procured. In May, 1681, he detached Markham, his kinſman, with a ſmall emigration, in order to take poſſeſſion of the country, and to prepare it for a more numerous colony. He publiſhed, in the ſubſequent July, "certain conceſſions, agreed on between the pro-"prietary and the adventurers."[21] But they contain nothing beſides the manner of acquiring lands, by which, contrary to the remonſtrances of his followers, a conſiderable quit-rent was reſerved; the mode of treatment of the Indians, whoſe rights were humanely attended to, becauſe they were men; and a few general regulations for the preſervation of internal order till his arrival, and the eſtabliſhment of a regular legiſlature. Judging of the intereſtedneſs of Lord Baltimore by his own feelings, he ſuppoſed that this nobleman had extended his province beyond his true limits: And in October, 1681, Pen tranſmitted a letter to Friſby, Harman, and to other principal inhabitants of the eaſtern ſhore of Maryland,[22] telling them, in language which ſhews either his miſinformation or his confidence, that they reſided in Penſylvania, and ought no longer to pay their rents or their taxes as formerly. They derided this warning, becauſe they perfectly knew their own affairs. But others, either of weaker minds, or of leſs honeſty, who, like thoſe to be found in every country, wiſhed only for a pretence to withhold their duties, refuſed to pay the public levies, till they were compelled by force; "the people hoping to be under no government."[20] And here commenced, from the forward ſelfiſhneſs of Pen, a controverſy, which, for upwards of half a century, created infinite expence and vexation to the two proprietaries, and anxiety to the people.

In Auguſt, 1681, Markham received from the governor of New-York, that extenſive foreſt, lying twelve miles northward of Newcaſtle, on the weſtern ſide of the Delaware, and finely watered by her, and by ſmaller ſtreams: As it enjoyed the advantages of a ſettled neighbourhood on the ſouth and eaſt, his followers were not embarraſſed with the difficulties

culties which depreſſed their predeceſſors in the ſame purſuits. And they made preparations with their habitual diligence for the numerous emigration expected in the ſubſequent year. Markham ſoon viſited Lord Baltimore, to deliver the royal letter of April, 1681; informing him of the grant of Penſylvania, recommending the infant colony and its leader to his friendly aid, requiring him "to make a true diviſion of the two "provinces, according to the boundaries and degrees expreſſed in their "patents."[24] This nobleman received him with the affection of a father, and profeſſed his readineſs to comply with requiſitions, which to him had the force of commands, becauſe they promoted the views of his ſovereign, and his own intereſt. In order therefore to fulfil both, he met that gentleman, in the ſubſequent year, in conformity to his own requeſt, at the village of Upland; which has ſince been denominated Cheſter. But a ſkilful obſervation, with an accurate inſtrument, having diſcovered what ſeems to have been a ſecret to both parties, that the place of treaty was twelve miles ſouthward of the fortieth degree of latitude; that the real boundaries of Maryland would conſequently run up to the Schuyl-kill; Markham was now as backward as he had been lately ſolicitous to eſtabliſh the limits of Penſylvania. It was to no purpoſe to renew their conferences at a ſubſequent day, becauſe the one determined to derive every benefit from the preciſion of his boundaries, while the other equally reſolved to draw advantages from the uncertainty of his.[25]

The conceſſions before-mentioned, given merely as a temporary expedient, would have afforded little ſatisfaction to his followers, and added nothing to the fame of Pen as a legiſlator. And in April, 1682, he publiſhed "the frame of government for Penſylvania."[26] The chief intention of this famous charter was declared to be, what was ſaid ought to be the end of all true government, "for the ſupport of power in "reverence with the people, and to ſecure the people from the abuſe of "power. For, liberty without obedience is confuſion, and obedience "without liberty is ſlavery." In proſecution of theſe ſalutary objects, the chief aim of the proprietary was to eſtabliſh the ſupreme power, legiſlative and executive, upon proper principles. The aſſembly, there-

fore, was directed to conſiſt at firſt of the whole freemen, afterwards of two, but never to exceed five hundred. A provincial council was eſtabliſhed, conſiſting of ſeventy-two members, to be choſen by the freemen; of theſe counſellors there was to be an annual ſucceſſion of twenty-four new ones; the ſame number annually going out: And here was the governor to preſide, inveſted with a treble vote. Thus compoſed, the council was not only inveſted with the whole executive powers, but with the ſame authority as had been given by the Carolinian conſtitutions, from which it was probably copied, of preparing ſuch bills as ought to be preſented to the aſſembly. The Penſylvanian *frame* was drawn chiefly from the Oceana of Harrington, which we are aſſured is the only valuable model of a commonwealth hitherto offered to the public:[27] Yet it is ſingular, that all the principal defects of the one are literally tranſcribed into the other, becauſe Pen was actuated by the uſual ſpirit of copyiſts. It is unneceſſary to point out either the beauties or the faults of a ſyſtem which was too viſionary to be ever carried into practice. The frame of government, however, which was extorted from Pen by the clamour of his followers,[28] was conſidered as ſo excellently calculated for ſecuring liberty, religious and civil, that many embraced it, in the perſuaſion that it would be punctually executed. But complex forms of government, like complicated movements in mechanics, will be ever found unmanageable in execution. The theoretical frame of Pen underwent a ſimilar fate as the no leſs impracticable conſtitutions of Locke: It was at once found to be inapplicable to the condition of the colony: And, after a variety of alterations, which did not amend it, it was at length wholly laid aſide, and the preſent ſimpler form eſtabliſhed. What happened to both, and the diſtractions engendered by them, offer this inſtructive leſſon to mankind: To be content with the conſtitution handed down to them by the wiſdom of their fathers; to be cautious how they remove ancient foundations in their eagerneſs to adopt the ſpeculations of theoriſts. As a ſupplement to *the frame*, there was publiſhed, in the ſubſequent May, a body of "laws agreed upon in England by the adven-" turers," which was intended as a *great charter*. And it does great honour to their wiſdom as ſtateſmen, to their morals as men, to their

ſpirit

ſpirit as coloniſts. A plantation, reared on ſuch a ſeed-plot, could not fail to grow up with rapidity, to advance faſt to maturity, to attract the notice of the world.

Diſſatisfied with the immenſe region which he had lately acquired, or conſidering the whole as unprofitable "unleſs he could carry it ſouth-"ward to Cheſapeake," Pen had continually ſolicited the duke of York, though in vain, for a grant of *the Delaware colony*.[29] Wearied at length with ſolicitation, or hoping for benefit from a poſſeſſion which had hitherto yielded him none, the prince conveyed in Auguſt, 1682, as well the town of Newcaſtle, with a territory of twelve miles around it, as that tract of land extending ſouthward from it upon the river Delaware to Cape Henlopen.[30] But no tranſaction could be more liable to objection: None could reflect more diſhonour on both parties, becauſe both knew that the title of what was now ſold was extremely exceptionable, ſince it belonged to another. For the duke's patents did not include it within his boundaries: And for twenty years his counſellors had adviſed him againſt procuring an incluſive grant, becauſe they foreſaw that the whole muſt one day devolve on him, with the crown itſelf. He could transfer, therefore, no other right than mere occupancy in oppoſition to the legal claim of Lord Baltimore, whoſe charter carried up his northern limits "to *that part* of the eſtuary of Delaware which lieth under the "fortieth degree of latitude." And he conveyed to him only the ſoil of a territory, whoſe extent it was impoſſible to deſcribe, becauſe it could not be aſcertained, without any of the powers of juriſdiction, which were, however, immediately aſſumed by Pen, becauſe grave men and philoſophers can do without ceremony what would cover others with ſhame. Having thus gratified his followers and his ambition, he departed for Penſylvania, in order to enlarge the ſcene of action, becauſe his active mind was never happy except while engaged in intrigue.

When the proprietary, for the firſt time, arrived on the banks of the Delaware in October, 1682, he found them inhabited by three thouſand perſons, compoſed of Swedes, Dutch, Finlanders, and Engliſh. They were deſcribed *as a plain, ſtrong, induſtrious, people*, though they had made no great progreſs in culture,[31] becauſe their poſſeſſion was recent. And

by theſe, as well as by his coloniſts, he was received with joy and reſpect, becauſe they had nothing to fear and much to hope. He was accompanied thither by about two thouſand emigrants, who, being either Quakers or other diſſenters, wiſhed to enjoy their peculiarities and religion in a country which offered a peaceful aſylum to the perſecuted. As numbers in England during the reign of Charles II. ſuffered more from what they dreaded than from what they felt, they naturally deſerted a land where they were miſerable, in order to enjoy that freedom and property, which were now offered them as the price of their change of habitation. And it became ſoon a gainful branch of commerce from the weſt of England to carry paſſengers to Penſylvania, becauſe the ſpirit of emigration pervaded a diſſatisfied people. Agreeably to *the counſel* of the good biſhop of London, *to buy the natives land*, Pen immediately entered into treaty with the Indians, from whom he purchaſed as much of the ſoil as the circumſtances of the colony required, for a price that ſeems to have given them ſatisfaction, and *with whom he ſettled a very kind correſpondence*. This policy, equally humane and wiſe, not only long enſured an advantageous peace to the province, but has conferred undiminiſhed celebrity on his name, while the adviſer of it has been hitherto either unknown or forgotten. Nothing ſeems to be liable to more objection than the mode in which lands have generally been acquired of the aborigines, becauſe the ownerſhip was inveſted in the tribes, and not in their ſachems, who too often ſold them at a time when they were incapable of diſpoſing of what really belonged to others. The general dominion of the immenſe foreſt, which at that time ſkirted the frontiers of the ſettlements, appears to have been inveſted in the *Five nations*, by the right of conqueſt. And, during the year 1684, they abſolutely refuſed to ſell the lands on the river Suſquehannah to Pen; becauſe he was oppoſed by the governor of New-York, whoſe influence was unbounded over this powerful people, who feared the loſs of the trade of peltry to his province, which that gentleman was ſuppoſed to have wronged in his anxiety to promote his own deſigns. The proprietary, however, enjoyed the ſatisfaction of having completed "the ſettlement of ſix-and-twenty ſail of "people to content within the ſpace of one year."[32] It was on this occaſion,

occaſion, that the foundation of Philadelphia was laid on a narrow tongue of land, formed by the junction of the rivers Schuyl-kill and Delaware; "which, we are aſſured, flouriſhed ſo much, that there were near a "hundred houſes and cottages built within a twelvemonth from its "commencement in 1682;" which afterwards became ſo juſtly famous for the regularity of its ſtructure, the convenience of its wharfs, the number of its warehouſes, the extent of its commerce, the greatneſs of its wealth, and the excellence of its police.

Nothing can be more amuſing than to remark the ſingular legiſlative conduct of Locke and of Pen, ſo renowned as colonial legiſlators: The former, leſs ſkilled in the ſcience of man, thought it ſufficient to eſtabliſh a learned ſyſtem for a deſert, expecting that the multitude would no ſooner comprehend the beauty of its parts than obey it: The latter judged more wiſely when he decided, "that there muſt be a people, be-"fore there can be a government; that the people muſt be united and "free, before there can be a permanent government." In proſecution of theſe large views, he convened the firſt aſſembly at Cheſter, in December, 1682; conſiſting of ſeventy-two delegates, from the ſix counties, into which had been already divided Penſylvania and the Delaware colony, that was ſoon denominated *the territories*. Here, according to *the frame*, the freemen might have come for this time in their own perſons, in the true ſpirit of Rouſſeau. But, not only the ſheriffs by their returns, but the inhabitants by their petitions to the proprietary, declared, that the fewneſs of the people, their inability in eſtate, and unſkilfulneſs in matters of government, will not permit them to act; thus ſhewing an example of humiliation, not common in the world. And they deſired, therefore, that the deputies now choſen, may ſerve both for the provincial council and general aſſembly; three out of every county for the former, and nine for the latter. Theſe repreſentations, ſo agreeable to the deſigns of the proprietary, probably procured by him, were paſſed by the aſſembly without heſitation into *an act of ſettlement*.[33] The perſons, thus returned, were declared to be the legal council and aſſembly; and every county was empowered to ſend the ſame number in future, which in the ſame manner ſhould conſtitute the legiſlature: And, after

after the addition of a few other explanations, the modified frame of government was ſolemnly recognized and accepted. When the whole reflected, "that nothing is more deſirable than the union of a people," an act was paſſed, annexing *the territories* to the *province*, communicating to the one the ſame privileges, government, and laws, as the other already enjoyed.[34] Nothing could be more wiſe than this policy; it is only to be regretted, that it was founded in uſurpation, becauſe, though to the ſoil of the Delaware colony Pen had the ſemblance of right, to the juriſdiction he had none. Over this tranſaction the aſſembly of 1704, with *great grief*, lamented, while it remonſtrated to Pen in characteriſtic language: "That thou, who knew how precarious thy power was to govern the "lower counties, ſhould bring thy province into ſuch a condition, that, "when the crown had aſſumed that government, the privileges granted "by thy ſecond charter ſhould become of no effect."[35] Every foreigner, who promiſed allegiance to the king and obedience to the proprietary, was at the ſame time declared to be a freeman, and entitled to his rights. The numerous laws, which were enacted at this firſt aſſembly, which do ſo much honour to its good ſenſe, diſplay the principles of the people; theſe legiſlative regulations kept them alive long after the original ſpirit began to droop and expire. Had Penſylvania been leſs bleſſed by nature, ſhe muſt have become flouriſhing and great, becauſe it was a principle of her great charter, "that children ſhould be taught ſome uſeful trade, to "the end that none may be idle, but the poor may work to live, and the "rich, if they became poor, may not want." That country muſt become commercial, which compels "factors, wronging their employers, "to make ſatisfaction, and one-third over;" which ſubjects not only the goods but the lands of the debtor to the payment of debts; becauſe it is the credit given by all to all that forms the eſſence of traffic. We ought naturally to expect great internal order when a fundamental law declares, that every thing, "which excites the people to rudeneſs, "cruelty, and irreligion, ſhall be diſcouraged and ſeverely puniſhed." And religious controverſy could not diſturb her repoſe, when none, acknowledging one God and living peaceably in ſociety, could be moleſted for his opinions or his practice, or compelled to frequent or maintain

tain any miniſtry whatſoever.[36] To the regulations, which were thus eſtabliſhed as fundamentals, muſt chiefly be attributed the rapid improvement of this colony, the ſpirit of diligence, order, and œconomy, for which the Penſylvanians have been at all times ſo juſtly celebrated. It is a ſingularity in the hiſtory of this province, that neither its various ſyſtems, nor its fundamental laws, were communicated to the king for diſſent or approbation, though ſo ſtrongly enforced by the charter, which was really forfeited by an omiſſion rather of deſign than neglect: Thus, evincing to the world how apt are the moſt rigid of men to diſregard the rights of others when abſorbed in what nearly intereſts themſelves.

Having thus promoted his own deſigns and the happineſs of the people, which, fortunately, on that occaſion both coincided; having thus ſecured internal quiet; the proprietary thought it prudent to turn his attention to thoſe diſorders that had already ariſen from diſputed juriſdiction, owing to the unſettled ſtate of his ſouthern boundary. In December, 1682, he met Lord Baltimore in Maryland, who received him with great, perhaps affected, civility. As he had been informed, by Markham, of the former proceedings with regard to this important buſineſs, he had the addreſs to procure from Charles II. another recommendatory letter before his departure from England. This he now preſented to his opponent. It directed the ſettlement of mutual claims, becauſe it would conduce to the royal ſervice, to the peace of both: It required this nobleman to determine his northern limits, by the admeaſurement from his ſouthern boundary, of the two degrees granted by his patent, according to the uſual computation of ſixty miles to each; which cannot, ſaid that monarch, be ſo certainly effected otherwiſe. It was received with the reſpect due to the recommendation of his ſovereign, though its contents, ſo different from that of the preceding year, rather merited diſregard. Lord Baltimore obſerved: "That his majeſty had "undoubtedly received miſinformation, becauſe his patent, which he "recommended to the attention of his antagoniſt, would clearly ſhew "not only that no ſpecific number of degrees were granted, but that it "carried his northern line to the fortieth degree of latitude; that, as "nothing could be controverted but where it interſected the Delaware,

"the

" the true mode of aſcertaining that diſputed object would be by an ob-
" ſervation on land, by a ſextant of ſix feet radius; by which he was
" willing to be concluded, though the inſtrument belonged to his oppo-
" nent." And he inſiſted, with a ſpirit worthy of a ſubject of England;
" that a royal mandate could not deprive him of what had been granted
" under the great ſeal." Perceiving that the letter had rather inſpired confidence than terror, Pen waved the meſſage he had brought, becauſe he was aſhamed of having given miſinformation; which was ſo eaſily detected, which degraded his prince and diſgraced himſelf. And, admitting that the latitudes expreſſed in their charters ought to bound the provinces of both, he propoſed: That the propereſt mode to diſcover the fortieth degree was by actual menſuration from the capes of Virginia, whoſe true ſituation had been once aſcertained, which was tranſmitted by tradition and invigorated by common fame. Had it been a degree of longitude which was controverted, what has perplexed mathematicians might have eaſily embarraſſed them. But though each deſcended to explanations of his own propoſal, which wanted little, yet both ſteadily adhered to what they deemed their own intereſt. In order, if poſſible, to adjuſt a controverſy that had diſturbed the eaſtern parts of his province, Lord Baltimore went to Newcaſtle in the ſubſequent year: Yet nothing was agreed on, becauſe the ſame propoſals were renewed in ſimilar language; and the obſtinacy of each was confirmed, ſince the views of each were now apparent. The one dreaded innovation, becauſe he knew not where it might end; the heart of the other was ſet upon " o-
" pening a door by the Cheſapeake, for peopling his colony."[37] And to this favourite object were at once ſacrificed candour, moderation, good neighbourhood; any one of which is of more real value, in the eſtimation of true philoſophers, than the ownerſhip of provinces, however wealthy and great.

The mind of Pen, ever active, ever fruitful in new ſchemes, was ſoon turned to an object extremely different in kind and extent. Diſſatisfied with the act of ſettlement, which his own management had ſo lately procured, he, without difficulty, created a ſecond frame;[39] agreeing partly with the firſt, modified according to the act of ſettlement, and in ſome meaſure

measure essentially different from both: And to this, with his usual address, he easily procured the assent of the assembly. For the encouragement of aliens, it declared, that, in case of death, without naturalisation, their lands shall descend to their heirs: In order that the inhabitants might be accommodated with such food *as Providence had freely afforded*, liberty was given to every one to hunt on unincloſed lands, to fish in all waters belonging to the province. It is a singular circumstance in the Pensylvanian history, that, in all the attempts of the proprietary, either to simplify the constitution or to gratify his own inclination, the interests of freedom were promoted. Whatever were his real intentions in this important change, the motives which were then avowed, on which all acted, are extremely remarkable: That the great number of representatives would prove burdensome to the province; that, as the governor had only a treble vote, the people, through their unskilfulness in the acts of navigation, might pass some laws repugnant thereto, which might occasion a forfeiture of the patent. But these reasons, whether real or affected, gave little satisfaction to the assembly of 1704; which, in this manner, concluded its remonstrance to Pen: "Thus was "the first charter laid aside, contrary to the true intent of the first ad-"venturers, and the second accepted by the assembly, where thou so-"lemnly testified that it was intended solely for the good of the freemen, "being prosecuted with much earnestness in thy spirit towards God." [40] The present shared the fate of the former, because not a trace of it remains in the present Pensylvanian constitution. Yet, while the assembly of April, 1683, thus admitted an innovation which gave such unhappiness to its successors, it established various salutary regulations. Abrogating the common law with regard to the descent of land, which had been introduced by the charter, it enacted; "that the estate of the in-"testate shall be disposed of, one-third of the personal property abso-"lutely, and one-third of the lands, during life, to the widow; two-"thirds of both among the children, *the eldest son having a double share*." [41] However consonant it might have been to feudal principles to give the lands of the feudary undiminished to him who was first able to defend them, this policy was extremely unsuitable to colonists, who had a wil-

derneſs to cultivate; becauſe, by giving property to every one, the exertions of all were invigorated. By the promulgation of ſuch laws, the growing proſperity of the province was promoted: Their beneficial effects were felt for years after their legiſlative energy had ceaſed. While Penſylvania proſpered by the wiſdom of her regulations, the enjoyments of the proprietary were embittered by his diſputes with Lord Baltimore. In order to promote the ſettlement of the country around Cape Henlopen, as well on the ſhore of Delaware as on that of the ocean, becauſe it was not only within his boundaries, but had been gained by him from the Dutch, this nobleman iſſued a proclamation, in May, 1683, offering ſpecial encouragement to planters. But it ſeems to have been attended with little ſucceſs, becauſe it was ſtrenuouſly oppoſed by his rival, who deemed the lands in controverſy within his conveyance from the duke of York. In return, Pen not long after iſſued a proclamation of a different kind; declaring that he had bought the lands lying between Delaware river and Cheſapeake-bay, and the Suſquehannah, of Mackaloha, their ſovereign; warning all perſons how they ſettled on them without leave, how they injured him or his fellow Indians.[42] Whither this ſachem poſſeſſed the rights of ſovereignty, which he now conveyed, was a queſtion that had never been aſked: The proprietary, like other rulers, had only looked for a pretence to raiſe objections, to ſtrengthen an invalid title; and here he found it. Having ſucceeded in all his views, except only with regard to his ſouthern boundary, which diſintereſted men ſaw could never be ſettled by amicable treaty, becauſe the principles and pretenſions of both were extremely different; having learned, from his agent, that his preſence was neceſſary in England; Pen departed for this country in Auguſt, 1684: Leaving his province in profound peace, "when "it began to wear a thriving face," under the adminiſtration of five commiſſioners, choſen from the provincial council, at the head of whom was Lloyd, the preſident.[43]

Mean-while, in order to invigorate the title of the duke of York to the Delaware colony, a new grant had been ſolicited, but delayed for ſome time by the oppoſition of Lord Baltimore, who equally felt the blow ſtruck at his rights and the inſult offered to his underſtanding. The arrival

arrival of Pen, however, haſtened the determination of this controverſy to final concluſion. James II. now reigned in England: And his ſpirit directed the deciſion of his miniſters. Having conſidered the matter in controverſy, the committee of plantations, in November, 1685, reported: That the land, intended to have been granted to Lord Baltimore, was ſuch as was inhabited by ſavages, but that the tract, now claimed by him, had been planted by Chriſtians antecedent to his grant; yet, to avoid farther differences, the peninſula, between the bays of Cheſapeake and Delaware, ſhall be divided into two equal parts, by a line drawn from the latitude of Cape Henlopen to the fortieth degree; that the portion, lying towards the latter, ſhall belong to his majeſty; the other to that nobleman. An adjudication, ſo agreeable to the royal intentions and to the deſigns of Pen, was approved, and ordered to be immediately executed. [44] But nothing could be more liable to objection than the principle upon which this judgement was founded. For it admitted the lawfulneſs of the intruſion of foreigners upon ancient Virginia; it denied the rectitude of the grant of New-Netherlands to the duke of York in 1664, under which he had ſo long poſſeſſed the diſputed property; it invalidated the reaſonings upon which England had always contended for American ſovereignty. Lord Baltimore ſubmitted: Happy that he had been deprived of no more; ſince a writ of quo-warranto had been iſſued againſt his charter. Yet his contention with Pen, who at preſent had gained ſo conſiderable an advantage, with regard to the extent of the two provinces remained. And it continued to diſtract the inhabitants on the borders of both till it was finally cloſed in May, 1750, by the illuſtrious Hardwick; who, diſregarding the merits of the controverſy, as extra-judicial, adjudged the agreement entered into between the poſterity of the original diſputants, in 1732, to be ſpecifically executed. [45]

Notwithſtanding ſo much care had been taken "to ſupport power in "reverence with the people, and to ſecure the people from the abuſe of "power," the proprietary had ſcarcely departed when the moſt violent diſſentions enſued. The provincial council and the aſſembly contended with regard to their mutual privileges and powers, as might have been

foreſeen, becauſe controverſy neceſſarily grew out of a conſtitution ſo extremely complicated. Moore, a proprietary officer, who was ſome times characteriſed by the aſſembly as "a corrupt miniſter of ſtate;" at other times as a "buſy meddling fellow;" was impeached by the delegates of the people, before the council, of high-miſdemeanours, but to no purpoſe. And Penſylvania was now inſtructed by experience in what had been oracularly delivered by her ſagacious founder, when he publiſhed his firſt frame of government: "That, though good laws do "well, good men do better: For good laws may want good men, be-"cauſe they may be evaded or aboliſhed by ill men." Diſguſted with the diſputes of a province where he expected harmony to preſide, and diſſatisfied with a frame of government which had aſſuredly given them birth, he gave orders to his commiſſioners, in 1686, to procure its diſſolution. But theſe were ſteadily oppoſed by the aſſembly; which, in the danger of frequent innovation, perceived the loſs of the people's rights and its own privileges. And it had reaſon to exclaim, in the words of Penn himſelf: "If men be bad, let the government be never ſo good, they "will endeavour to warp and ſpoil it to their turn!" The commiſſioners being thus unable to execute orders, which ſapped his future credit in the province, they were not long after ſuperſeded, and a deputy-governor for the firſt time appointed.[46]

Blackwell, trained under Cromwell, and perfectly acquainted with the party-management of thoſe times, began his adminiſtration, in December, 1688, by ſowing diſcords among the freemen, by endeavouring to overawe the timid, by a diſplay of power. But he knew not the real ſpirit of the people over whom he preſided; who, at the ſame time that they profeſſed peace and obedience, were obſtinately firm. With this laſt deſign he executed a meaſure which is of all others the moſt provoking to popular aſſemblies, becauſe it ſhakes the foundation of their power. The moment White, the late ſpeaker, who had been active in the proſecution of Moore, was choſen a delegate, he was impriſoned, by the governor's orders, on the moſt frivolous pretence: And, though a writ of habeas-corpus, the diſtinguiſhing privilege of Engliſhmen, was procured, he remained long in confinement, becauſe means were found

to

to evade it. Juſtly ſuſpecting that the aſſembly would open the ſeſſion with a diſcuſſion of grievances, Blackwell delayed to convene it till March, 1689. And the ſpeech which he delivered on this occaſion was calculated to provoke reſentment rather than to conciliate good will. As had been foreſeen, the aſſembly inſtantly preſented a repreſentation of grievances to the governor and council: Complaining; "that three coun-"ſellors, in whoſe wiſdom and faithfulneſs it confided, had been too "long kept out without cauſe; that one of its own members was "treated with undeſerved rigour, during the ſitting of aſſembly, and "was not allowed to attend." It therefore prayed; that a tender regard ſhould be paid to the public grievances; that it might not be diſmiſſed "till righted in juſt complaints;" that it might not be "diſ-"couraged in charging, before the provincial council, the ill miniſters "and chief authors of the preſent arbitrarineſs in government." Too little attention was given to a remonſtrance, which ought to have convinced thoſe, to whom it was addreſſed, of the real ſpirit of its framers. And the aſſembly, therefore, reſolved: "That no perſon, appointed to "receive the public fines or revenues, ſhall ſit in judgement in any cauſe "where emolument ſhall accrue to the governor:" Thus levelling its reſentment againſt the *ill miniſters*, of whom it had complained to no purpoſe. To the governor it at the ſame time repreſented: "That, as to the proprietary's abſence, as it may be to his diſap-"pointment, ſo it was extremely to the people's prejudice; that, as "to the project of letting all the laws fall, it conceived he had no "reaſon ſo to do, becauſe thoſe, which were not declared void by the "king, remained in force; that, even with the conſent of the freemen, "the proprietary can make no rules to bind the province but in the "granted way of the charter and act of ſettlement: And, as it deſired, "ſo it hoped, no laws of any other make will be impoſed upon the "people." Thus vigorouſly oppoſed, the governor uſed an expedient no more conſiſtent with his own dignity than with any principle of ſound policy; he prevailed on certain delegates to withdraw themſelves: But, as might have been expected, the aſſembly voted their conduct a treachery.[47] Thoſe ſignal tranſactions, proceeding partly from the levity, perhaps intereſtedneſs, of that famous legiſlator, from the confuſion of the

conſtitution

conſtitution itſelf, but more from thoſe cauſes which exiſt in the infancy of every free government, before time and practice have produced precedents, exhibit the temper of thoſe men and thoſe times, and demonſtrate the public infelicity under the rule of the celebrated founder of the Penſylvanian government.

It is amuſing, at this day, to obſerve how differently the reputations of the fathers of Maryland and Penſylvania have been tranſmitted to poſterity. Baltimore is utterly forgotten and unknown to fame, while Pen is celebrated as the wiſeſt of legiſlators, equal to Lycurgus or Solon. The aſſemblies of Maryland, however, have always ſpoken "with gra-" titude of the unwearied care of the former, in preſerving their lives " and liberties; of his vaſt expence in the improvement of their eſtates." On the other hand, the aſſembly of Penſylvania has complained with *grief of the latter*, " for undermining his own foundations; and, " by a ſubtle contrivance, laid deeper than the capacities of ſome could " fathom, finding a way to lay aſide the act of ſettlement, to diſſolve his " ſecond charter." The conſtitution, eſtabliſhed by the former, though leſs ſtriking, was more ſolid and more durable, under which the people enjoyed great repoſe to the preſent times: Though that of the latter flattered the vanities of men, it was too theoretic to be practicable, too flimſey to prove laſting, too complicated to enſure continual harmony. What did honour to the good ſenſe of the one has conferred no celebrity on his name: What was too wild to be uſeful has acquired the other the praiſe of philoſophers.

Too much engaged in their own conteſts and purſuits, and actuated by the principles of their ſuperior, whoſe attachments and intrigues, during thoſe days, are known to every one, the coloniſts and their rulers ſeem to have diſregarded the ſignal revolution which transferred their allegiance, and Penſylvania, to the prince and princeſs of Orange. As the acceſſion of James II. had been announced with joy, becauſe Pen enjoyed advantages from his elevation, ſo the laws and government of this province were adminiſtered in the name of the abdicated monarch, long after William and Mary had been formally proclaimed in other colonies.[48] Notwithſtanding the infelicities we have remarked, Penſylvania, owing to cauſes

cauſes that have been already ſuggeſted, flouriſhed prodigiouſly, and increaſed ſo faſt in population, induſtry, and wealth, that ſhe ſoon outſtripped her neighbours, and in a ſhort period hath become, perhaps, the moſt commercial, rich, and powerful, of all the plantations. This province is a ſingular inſtance, how public diſputes may even promote private proſperity, becauſe, when the ſpirit of a people is rouſed, they naturally turn the energy which they thence acquire to the uſual occupations of life.

AUTHORITIES AND NOTES.

[1] Ant. p. 229. — [2] Maryland Ent. 1 v. p. 107-9. — [3] See an extract of his letter from the Dutch records. — Smith's Hiſt. N. York, p. 4. — [4] Treaties of peace, 3 v. p. 402. — [5] Smith's Hiſt. N. York, p. 5; which cites Alpendam's inſtructions. — [6] Ib. p. 7-18; and ſee a very long and intelligent depoſition of Van Sweringen on this ſubject.— Maryl. Pap. 1 v. C. 35. — [7] Ib. — [8] Smith's Hiſt. N. York, p. 31: And ſee the capitulation, N. York Pap. 1 v. — [9] See the chapter of New-Jerſey, Ant. — [10] His petition is among Penſyl. Pap. p. 1; and ſee Journ. Plant. Off. 3 v. p. 174. — [11] The two ſubjoined papers will not only ſhew the preciſe anſwers returned to the notice of the committee of colonies, but diſcloſe ſeveral facts with regard to this dark portion of Penſylvanian hiſtory

Sir John Werden's anſwer to Secretary Blathwayt. — From Penſyl. Pap. p. 5.

"SIR, St. James's, 23d June, 1680.

"I had anſwered your letter of the 14th inſtant ſooner, but that my going to Windſor, juſt when I received it, hindered me then, and alſo made me think it proper, to acquaint the duke with the contents of it firſt. What I have now to ſay is this: That by all which I can obſerve of the boundaries mentioned in Mr. Pen's petition, they agree well enough with that colony, which hath been hitherto (ever ſince the conqueſt of New-York by Colonel Nichols) held as an appendix and part of

of the government of New-York, by the name of Delaware colony, or more particularly Newcaſtle colony (that being the name of the principal place in it, the whole being planted promiſcuouſly by Swedes, Finlanders, Dutch, and Engliſh) all which hath been under the actual government of his royal highneſs's lieutenant at New-York hitherto: But what are its proper boundaries (thoſe of latitude and longitude being ſo very little known, or ſo ill obſerved, as experience tells us, in all the Weſt-Indies) I am not able to ſay. If this be what Mr. Pen would have, I preſume the right honourable the lords of the committee of plantations will not encourage his pretenſions to it, becauſe of what is abovementioned, which ſhews plainly the duke's right preferable to all others, (under his majeſty's good liking,) though it ſhould not prove to be ſtrictly within the limits of the duke's patent. But if it be any other parcel of land, unimproved in thoſe parts, which is without all other patents, and not interfering with the poſſeſſions of his majeſty's ſubjects already ſettled there, I humbly ſubmit to their lordſhips how far they may think it convenient (under fitting reſtrictions and qualifications, whereby to tie up the government of ſuch new colony as near as may be to the laws of England) to recommend the petitioners requeſt to his majeſty.

I remain, &c.

JOHN WERDEN."

The anſwer of the agents of Maryland to Secretary Blathwayt — From Penſyl. Pap. p. 7.

"SIR,

In anſwer to yours, in reference to Mr. Pen's petition, ſome things are thought proper to be offered, in reſpect of the particular concerns of my Lord Baltimore; ſomething in reference to the public, on his lordſhip's behalf. It is deſired, that if the grant paſs unto Mr. Pen of the land petitioned for by him in America, that it be expreſſed to be of land that ſhall lie north of Suſquehannah fort, and north of all lands in a direct line between the ſaid fort and Delaware river, and alſo north of all lands upon a direct line weſtward from the ſaid fort. For, that fort is the boundary of Maryland northward. It is farther deſired, that there may

may be contained general words of reſtriction, as to any intereſt granted to Lord Baltimore: And ſaving to him all rights granted. It is alſo prayed, that my lord's counſel may have a ſight of the grant before it paſs. On the public account it is offered, that ſome due caution be provided, that no arms, powder, ſhot, or other ammunition, be ſold by any that ſhall ſettle in this new plantation to the Indians or natives. For thereby a common miſchief may happen unto all his majeſty's neighbouring plantations. This, with our thanks on my Lord Baltimore's behalf for your care on him, is all at preſent from

23d June, 1680. Barnaby Dunch, Richard Burke."

[12] Pen agreed: "That Suſquehannah fort ſhall be the limits of Maryland, and profeſſed himſelf ready to ſubmit to any reſtraint as to furniſh-"ing the Indians with arms." — Journ. Pl. Of. 3 v. p. 179. — Yet theſe agreements were overlooked when the charter was adjuſted, becauſe the notice ſent to the agents of Maryland had been merely formal. — [13] The attorney-general's obſervations on the charter are among the Penſyl. Pap. p. 23. — [14] The boundaries were ſettled by lord chief juſtice North: Yet the obſcurity of the following expreſſions ſeems to prove, that no diſtinct notion was entertained of what were to be the ſouthern limits of Penſylvania: "And on the ſouth, by a circle drawn at twelve miles diſtance "from Newcaſtle northward and weſtward, unto the beginning of the "fortieth degree of northern latitude." Charter. — The latitude of Newcaſtle, according to an accurate obſervation taken in 1682, by Lord Baltimore and Markham, was 39 d. 40 m; that of Cheſter, 39 d. 47 m. 5 s. So that the 40 d. interſected the Delaware twenty miles northward of Newcaſtle. — See Maryl. Pap. 1 v. C. 51. — If the fortieth degree of latitude be that mathematical point in the meridian, which is forty degrees from the equator and fifty from the pole, then the fortieth degree can neither have a beginning nor an end. — It had been eaſier to have ſaid: "That the *northern* boundary of Maryland ſhall be the "*ſouthern* of Penſylvania." Yet this would not have prevented diſpute, unleſs the charter had directed: "That the 40th degree of north latitude "ſhall be aſcertained by an accurate obſervation." Perhaps it is im-

poſſible to exclude controverſy, when an artful, able, and intereſted, man is countenanced by power.

[15] Journ. 3 v. p. 249-50: His lordſhip's obſervations on the charter are among Penſyl. Pap. p. 33. — [16] Mod. Un. Hiſt. 41 v. p. 5. — [17] See the charter annexed to the laws of the province, printed by B. Franklin.

[18] When examined by the houſe of commons, Doctor Franklin ſaid: "He knows there is ſuch a clauſe in the Penſylvania charter; but the people underſtood it thus: By *the ſame charter* and *otherwiſe*, they are entitled to all the liberties and privileges of Engliſhmen: They find, in the great charter and the petition and declaration of rights, that one of the privileges of Engliſh ſubjects is, that they are not to be taxed but by their common conſent: They have therefore relied upon it, from the ſettlement of the province, that the parliament never would, nor could *by colour of that clauſe* of the charter, aſſume a right of taxing them till it had qualified itſelf to exerciſe ſuch right by admitting repreſentatives from the people taxed." Yet it may be obſerved: That *the Penſylvanians were not declared by the patent to be Engliſh ſubjects*, entitled to the liberties of Engliſhmen; becauſe the great lawyers, who reviſed it, knew the futility of ſuch a declaration; but it reſerved their allegiance to the crown, and the common law thence inferred that they were ſubjects: And, being ſubjects, they were neceſſarily entitled to the rights of Engliſhmen, at the ſame time that they owed the obedience and performed the duties of Engliſhmen. The great charter; the petition of right of 1628; the declaration of right of 1688; all indeed aſſerted, that the people ſhall not be taxed, except by *common conſent*; yet all equally declared how this ſhould be given; *by act of parliament*. Nothing can be more ſimple or more liberal than the undoubted rule of the law of England on this ſubject: *That no burdens ſhall be impoſed on the Engliſh nation, but by the Engliſh nation itſelf*. The will of the whole is inveſted in the great body politic, in the legiſlature. And, when taxes are eſtabliſhed, this will is expreſſed by the aſſent of the commons, the lords, and the king. Penſylvania had been created a province of the Engliſh empire by its patent; the Penſylvanians conſequently muſt have been at all times members of the Engliſh

Engliſh nation, parts of a whole: And their will, therefore, hath always been included in the will of the ſtate. Nothing is ſo fatal to the ſpeculation of philoſophers as the aſſertions of authentic facts. Being one of the proprietors of the Jerſeys, Pen was equally engaged, at the epoch of the Penſylvanian charter, in ſoliciting the duke of York for a ſimilar patent to releaſe the power of taxation, which he had long exerciſed by virtue of his prerogative alone, which he formally relinquiſhed upon hearing the opinion of Sir William Jones: The ſame proprietors requeſted, in 1688, *that an officer might be ſent to Perth-Amboy to collect the cuſtoms which had been impoſed by parliament*. Copied literally from the charter of Maryland, that of Penſylvania is extremely ſimilar, becauſe the object of Pen was the ſame, as had been that of Calvert, to guard againſt the exertions of prerogative which experience had taught both was ſo inconvenient. But, of the clauſe of exemption, the attorney-general remarked, *that it was illegal*: And the ſaving of the right of parliament was added by chief-juſtice North, becauſe he was of the ſame opinion, and obſerved its tendency. The charter then introduced no new law, but merely declared the old. For, it did not reſtrain any power of the king, which the common-law had not already reſtrained; it did not confer any authority on the parliament, which the ancient conſtitution had not conferred: And though the legiſlature have conſtantly impoſed burdens on Penſylvania, the power was not exerted *by colour of that clauſe*, but by virtue of the title whereby they have always taxed every ſubject of the crown. For neither commons, nor lords, when aſſembled in parliament, claim any of the powers of legiſlation from the grant of a king of England, becauſe, forming conſtituent parts of the ſupreme power, they are both equally ſovereign. Such were the genuine views of Pen, who ſketched the Penſylvanian charter, of the eminent lawyers and ſtateſmen, who reviſed it. It is contrary to univerſal juriſprudence, becauſe inconſiſtent with the dictates of common ſenſe, deſtructive of mutual faith, to plead for a latent intention in oppoſition to expreſs declarations.

[19] In January, 1681, the biſhop of London requeſted the committee of plantations; "that Pen may be obliged by his patent to admit a chap-

" lain of his appointment upon the requeſt of any number of planters." Journ. Plant. Off. 3 v. p. 250.

[20] Hiſt. Rev. of the Conſt. of Penſyl. p. 11. — [21] The conceſſions are annexed to the laws of the province. — [22] It is among the Maryl. Pap. B. 44 — [23] Ib. 43. — [24] Maryl. Ent. 1 v. p. 83-4. — [25] There is a minute account of this negotiation among the Maryl. Pap. vol. 1. — [26] It is annexed to Colden's Hiſt. of Five nations. — [27] Hume's Eſſ. 1 v. p. 516. — [28] Markham, who had been the ſecretary of Pen, and was afterwards the deputy-governor of Penſylvania, in writing to Fletcher, governor of New-York, in May, 1696, ſays: " I very well know that it [the frame of " government] was forced from him by *friends*, when, unleſs pleaſed and " granted whatever they demanded, would not have ſettled his country." N. York Pap. A. N° 12.— This anecdote ſufficiently explains the true cauſe of all the different changes effected by the proprietary during his reſidence in Penſylvania.

[29] Sir John Werden wrote to Pen in July, 1681; " that the duke of " York was not yet diſpoſed to grant the lands about Newcaſtle." — He, at the ſame time, informed him, that he thought his claims to the iſlands in the Delaware ill-founded, becauſe they were not included by the words of his patent, and were never intended to be granted. — He immediately warned Dongan, governor of New-York, " to prevent Pen's " encroachments on his province or its dependencies:" Giving a reaſon, which ſhews the opinions of men who had done much buſineſs with him; " that he was very intent on his own intereſt in thoſe parts, as you ob- " ſerve." — N. York Ent. 35-6-47.

[30] See the deeds, in Record, Proprieties, B. 445-51. — [31] Brit. Emp. Am. p. 165. — [32] See Dongan's relation, in the N. York. Pap. vol. 1; Pen's letter, poſt. — [33] See this annexed to Colden's Hiſt. Five Nations. — [34] See the act of union, Proprieties, B. 457. — [35] Hiſt. Rev. p. 16. — [36] Appendix to Laws of Penſyl. — [37] Maryl. Ent. 1 v. p. 85-6. — [38] See this remarkable conference, which was taken in ſhort hand, and tranſmitted, by lord Baltimore, to the committee of plantations. — Maryl. Pap. 1 v. — Of this tranſaction, however, Pen feelingly complained, in the ſubjoined letter, to the ſame committee; which was the firſt written

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ten by him from Philadelphia to the miniſters of England, which will ſhew how much a man of art and abilities may write, without giving any real information. — From Penſyl. Pap. p. 39.

" Philadelphia, 14th of the 6th month, Auguſt, 1683.

Though it be a duty, I humbly own, to inform the lords of the committee of plantations of what concerns his majeſty's intereſt in the ſucceſs of this province, I thought myſelf equally obliged to be diſcreet and cautious in doing it; to write when there was need, and not trouble perſons of their honour and buſineſs with things trivial, at leaſt raw and unfiniſhed, for their view. This, hitherto, put me by giving any account of the ſtate of our affairs; to ſay nothing of the mighty difficulties I have laboured under in the ſettlement of ſix and twenty ſail of people to content, within the ſpace of one year, which makes my caſe ſingular and excuſable above any other of the king's plantations. But, becauſe my agent has informed me that the proprietor of Maryland has been early in his account of our conference, about the fixing of our bounds, and made a narrative of my affairs, as well before as at the time, a little to my diſadvantage; and the rather, becauſe my ſilence might be interpreted neglect, I am neceſſitated to make ſome defence for myſelf; which, as it will not be hard to make, ſo I hope it will be received as juſt.

I humbly ſay then firſt, that it ſeemed to me improper to trouble the lords with my tranſactions with this proprietor till we were come to ſome reſult, which we were not; for we parted till ſpring, and even then were but to meet about the methods of our proceeding. Next, this narrative was taken by this lord's order without my conſent or knowledge, in a corner of a room, by one of his own attendants; and, laſtly, when, upon notice given of this uſage, I complained to him, he promiſed, upon his word and honour, it ſhould go no farther, and that it was for his own ſatisfaction he did it: I told him that mitigated the thing a little; but, if he ſhould divulge it before I ſaw and agreed to the copy, he muſt pardon me if I looked upon it as a moſt unfair practice: What that lord has done, and what to call it, I leave to my betters: but the ſurpriſe and

indignation

indignation of the whole will, I hope, excuſe me of neglect or diſreſpect; for, though I am inceremonious, I would by no means act the rude or undutiful. This ſaid, I humbly beg that I may give a brief narrative of the matter as it then paſt, ſince has been, and now ſtands, without the weakneſs and tautology his relation makes me guilty of.

So ſoon as I arrived, which was on the 24th of October laſt, I immediately diſpatched two perſons to the lord Baltimore, proprietary of Maryland, with my reſpects, to aſk of his health, offer kind neighbourhood, and agree to a time of meeting, the better to eſtabliſh it. Whilſt they were gone in this errand I went to New-York, that I might pay my duty to the duke, in the viſit of his government and colony: At my return, which was towards the end of November, I found the meſſengers I had ſent to Maryland newly arrived; and the time fixed being the 19th of December, I prepared myſelf in a few days for that province. The 11th of that month I came to Weſt-river, where I met the proprietor, attended ſuitable to his character, who took the occaſion, by his civilities, to ſhew me the greatneſs of his power. The next day we had a conference about our buſineſs of the bounds, both at the ſame table, with our reſpective members of council. The firſt thing I did was to preſent the king's letter, which conſiſted of two parts; one, that the lord Baltimore had but two degrees; and the other, that, beginning at Watkins's point, he ſhould admeaſure his ſaid degrees at ſixty miles to a degree. This being read by him firſt privately, then publicly, he told me that the king was greatly miſtaken, and that he would not leave his patent to follow the king's letter, nor could a letter void his patent, and by that he would ſtand. This was the ſubſtance of what he ſaid, from firſt to laſt, during the whole conference. To this I anſwered, that the king might be miſinformed rather than miſtaken, and that I was afraid the miſtake would fall on his ſide. For, though his patent begins at Watkins's point, and goes to the 40th degree of north latitude, yet it preſumed that to lie in the 38th; elſe Virginia would be wronged, ſhould that extend to that degree: However, this I aſſured him, that, when I petitioned the king for five degrees north latitude, and that petition was referred to the lords of the committee of plantations, at that time it

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was urged, by ſome preſent, that the lord Baltimore had but two degrees; upon which the lord-preſident, turning his face to me, at whoſe chair I ſtood, ſaid, Mr. Pen, will not three degrees ſerve your turn? I anſwered, I ſubmit both the what and how to this honourable board. To this his uncle and chancellor returned, that, to convince me his father's patent was not by degrees, he had more of Virginia given him; but, being planted, and the grant only intending land not planted or poſſeſſed but of ſavage natives, he left it out, that it might not forfeit the reſt, of which the lord Baltimore takes no notice in his narrative that I remember; but, by that anſwer, he can pretend nothing to Delaware, *that was at and before the paſſing of that patent, bought and planted by the Dutch*, and ſo could not be given; but, if it were, it was forfeited for not reducing it, during forty years, under the Engliſh ſovereignty, of which he held it: But was at laſt reduced by the king, and therefore his to give as he pleaſeth. Perceiving that my preſſing the king's letter was uneaſy, and that I had determined myſelf to diſpoſe him with the outmoſt ſoftneſs to a good compliance, I waved that of the two degrees, and preſſed the admeaſurement only, the next part of the letter. For, though it were two degrees and a half from Watkins's point to 40; yet, let it be meaſured at 60 miles to a degree, and I would begin at 40, fall as it would; my deſign was, that, every degree being 70 miles, I ſhould get all that was over 60, the proportion intended the lord Baltimore by the grant, and the computation of a degree at that time of the day. Thus he had enjoyed the full favour intended him, and I had gained a door of great importance to the peopling and improving of his majeſty's province. But this he alſo rejected. I told him it was not the love or need of the land, but the water, that he abounded in, what I wanted, and had acceſs and has carriage even to exceſs; that I would not be thus importunate, but for the importance of the thing, to ſave a province; and, becauſe there was no proportion in the concern, if I were a hundred times more urgent and tenacious the caſe would excuſe it, becauſe the thing inſiſted on was more than ninety-nine times more valuable to me than to him; to him the head to me the tail. I added, that if it were his, and he gave it me, planting it would recompence the favour; not only

only by laying his country between two thriving provinces, but the ſhips that come yearly to Maryland, for tobacco, would have the bringing of both our people and merchandiſe, becauſe they can afford it cheaper; whereby Maryland would, for one age or two, be the mart of trade; but this had no other entertainment but hopes that I would not inſiſt on theſe things at our next meeting. After three days we parted, and I returned for this province.

When the ſpring came, I ſent an expreſs to pray the time when and where I ſhould meet him, to effect the buſineſs we adjourned to that time. I followed cloſe upon the meſſenger, that no time might be loſt; but the expectation he twice had of the lord Culpeper's viſit diſappointed any meeting in our affair till the month called May. He then ſent three gentlemen to let me know he would meet me at the head of the bay of Cheſapeake: I was then in treaty with the kings of the nations for lands: But three days after we met, ten miles from Newcaſtle, (which is thirty from the bay,) I invited him to the town; where, having entertained him as well as the town could afford on ſo little notice, and finding him only deſirous of ſpeaking with me privately, I preſſed that we might, at our diſtinct lodgings, ſit ſeverally with our council, and treat by way of written memorials, which would prevent the miſtakes or abuſes that might follow from ill deſign or ill memory; but he avoided it, ſaying, he was not well, the weather ſultry, and would return with what ſpeed he could, reſerving any other treaty to another ſeaſon. Thus we parted at that time; I had before been told, by ſeveral, that the lord Baltimore had iſſued forth a proclamation to invite people, by lower prices and greater quantities of land, to plant in the lower counties, in which the duke's goodneſs had intereſted me, as an inſeparable benefit to this whole province: I was not willing to believe it, and, he being in haſte, I omitted to aſk him; but I had not been long returned, before two letters came from two judges of two of the county-courts, that ſuch a proclamation was abroad, that the people abhorred to hearken to it, but yet prayed my directions. I bid them keep their ground, and not fear, for the king would be judge. Upon this, I diſpatched to the lord Baltimore three of my council with the clerk of it. As they went, they got

got an authentic copy of one of his ſheriffs, to whom an original had been directed; but, as the laſt civility I would yield him, I forbid them to ſeem to believe any thing but what they had from his own mouth. Thus they delivered my letter; at firſt he denied any ſuch proclamation, turning to two gentlemen of his council that ſtood by, aſked them if they remembered any ſuch thing, they alſo denied it; upon which the perſons I ſent produced an atteſted copy, which, refreſhing their memories, they confeſſed there was ſuch a proclamation; but the lord Baltimore told them it was his ancient form, and he only did it to renew his ancient claim, not that he would encourage any to plant there. They then prayed him to call it in, leſt any trouble ſhould enſue; but he refuſed it. This was during a civil treaty, without any demand made, and after the place had been many years in the quiet poſſeſſion of the duke. What to call this I ſtill humbly refer to my ſuperiors. For his pretenſions to thoſe parts I have fully inſtructed my agents, who, I hope, will be able to detect them of weakneſs and inconſiſtency. This is a true, though brief, narrative of the entertainment I have had from that lord in the buſineſs between us.

And becauſe I have, as in duty bound, ſent an agent extraordinary to wait upon the king and his miniſters in the affairs of this province, (ſo ſoon as I could make any ſettlement in it,) I ſhall only humbly pray leave to hint at two or three things relating to the buſineſs depending between this lord and myſelf, about finding the fortieth degree of north latitude.

That I have common fame on my ſide, grounded upon an ancient and conſtant judgement, that the fortieth degree of north latitude lieth above Poole's iſland; this the lord Baltimore himſelf hath not denied, the country confeſſeth, and I ſhall, when required, prove by ſome able maſters of ſhips.

If this were an error, it is grounded upon ſuch ſkill and inſtruments as gave meaſure to the times in which his patent was granted; and, if he hath got upon Virginia by that error, he ſhould not get upon me by an exacter knowledge, conſidering that Carolina, which endeth by degrees, would as much advance upon Virginia if the reputed latitude of unpre-

judiced times ſhould take no place; for, by advancing her bounds twenty miles, by a new inſtrument, beyond the place which hath generally been taken for thirty-ſix and a half, and Virginia not being equally able to advance upon Maryland, (becauſe of its beginning upon a place certain,) ſhe will be narrowed between both.

I therefore moſt humbly pray that the judgement of ancient times, by which perſons, at the diſtance of England from America, have governed themſelves, may conclude that lord's bounds; or, that he may meaſure his two degrees according to the ſcale and computation of thoſe times, which was ſixty miles to a degree; *or, if it be allowed that he had not his grant by degrees*, that, at leaſt, I might not loſe the benefit of admeaſurement as before-mentioned, from Watkins's point (in whatſoever degree of latitude that ſhall be found) to the fortieth degree of north; which I humbly take the more courage to preſs, becauſe a province lieth at ſtake in the ſucceſs of it.

I have only humbly to add, that the province hath the proſpect of an extraordinary improvement, as well by divers ſorts of ſtrangers as Engliſh ſubjects; *that, in all acts of juſtice, we name and venerate the king's authority; that I have exactly followed the biſhop of London's counſel, by buying, and not taking away, the natives land*, with whom I have ſettled a very kind correſpondence. I return my moſt humble thanks for your former favours in the paſſing of my patent, and pray God reward you. I am moſt ready to obey all your commands, according to the obligations of it; and beſeech you to take this province into your protection, under his majeſty; and him, whom his goodneſs hath made governor of it, into your favour; for that I am, with moſt ſincere devotion, your thankful, faithful, friend and ſervant,

WILLIAM PEN."

[39] This frame of government, of 1683, is annexed to Colden's Hiſt. Five Nations. — [40] Hiſt. Rev. p. 17-18. — [41] Append. to Laws — [42] See theſe two proclamations, in Maryl. Pap. 1 v. C. 8-32. — [43] Hiſt. Rev. p. 18. — [44] Maryl. Ent. 1 v. p. 105-9; Journ. Plant. Off. 4 v. p. 138-9-55-71; Ib. 5 v. 188-99-207-26. — [45] Veſey's Rep. 1 v. p. 144. — [46] Hiſt. Rev. 19. — [47] Ib. p. 20-5; Mod. Univ. Hiſt. 41 v. p. 7-9.

[48] It

[48] It appears, from a depoſition of Forat's, among the Penſylv. Pap. p. 147. that William and Mary were not proclaimed, in Penſylvania, ſo late as September, 1689; that the laws continued to be ſtill adminiſtered in the name of James, whoſe health was commonly drunk. The ſubjoined *extract of a letter from Jacob Leiſler*, who had acquired the command of New-York, *dated 7th February*, 1689, *to biſhop Burnet*, ſhews how the principles and practice of the Quakers were regarded by men who had run into the other extreme. — From N. Jerſey Pap. p. 153.

" Many reſort to our neighbours of Eaſt-Jerſey and Penſylvania, (there being many Quakers in thoſe parts,) who *(without abuſing them)* encourage, if not out-do, the Roman-catholics: And moſt of our calamities are truly indebted to them; covering their pernicious practices by their blind ſcruples and impudent interpretations, depending ſtill upon, and aſſerting, Mr. Pen to be a perſon of undoubted ſincerity. In the mean time they advance the intereſts of king James, and ſay that all commiſſions are good to this day; owning none, ſave king James; openly drinking his health, &c. whom, in due time, we hope to ſubdue."

REMARK. There are a great number of letters, in the bundle of New-York papers, from Leiſler to the biſhop, which are written in a ſimilar ſtrain; but they only merit the regard due to the writings of one violent party-man to another.

CHAP. XXII.

A pauſe may be here neceſſary, — The reaſon. — Coloniſation always practiſed. — The colonies of Greece; — of Carthage; — of Rome. — How governed. — The ancient dependencies of England. — Their conſtitutions. — What authority the ſupreme legiſlature exerted over them. — The extent of its power diſcuſſed. — The views of every one in planting America. — What privileges the emigrants carried with them. — Whether the plantations formed diſtinct countries. — How far the juriſprudence of England became that of the colonies. — The genuine rights of the coloniſts. — How theſe differed from the privileges of the provincials of ancient or modern democracies; — of monarchies. — The firſt colonial conſtitutions. — The beneficial change after the Reſtoration. — The powers of the governor; — of the council; — of the delegates. — The authority of all theſe when convened in aſſembly. — Compared with the power of parliament. — Recapitulation. — Concluſion.

WE have now attempted, though with very unequal powers, to trace the great outlines of the hiſtory of the preſent confederated colonies, from their ſettlement to that important period in their annals, when the Revolution, by eſtabliſhing a ſyſtem of legal government, reſcued the greater half of them from ſlavery, and the other from an anarchy more degrading, becauſe it was more pernicious. We have beheld America diſcovered, the deſert planted by Engliſh ſubjects, charters granted, and colonial conſtitutions eſtabliſhed; we have ſeen the dawn of liberty on the wilderneſs, its various eclipſes, its ſubſequent illuminations, its final extinction. We have remarked the ſpirit of the adminiſtration of the colonies under diſſimilar forms of government in England, monarchical, republican, and a mixture of both; the various acts, paſſed during the foregoing period by the Engliſh legiſlature, either attempted only or fully executed; the ſubſequent ſubmiſſion of the plantations or their oppoſition. And it may be of uſe and importance to pauſe a little here; in order to inquire briefly what privileges the emigrants really

really were entitled to poſſeſs as ſubjects of the crown of England, or as coloniſts ſettling a deſert territory of the ſtate. Hiſtory recites facts, authentic and intereſting, to little purpoſe, if we ſtop not to conſider what leſſons may be drawn from them favourable to the ſtudy of politics as a ſcience, uſeful in the conduct of life.

Coloniſation has been practiſed at all times and by every tribe, becauſe it was the means employed by infinite wiſdom to ſpread population and improvement over the globe. How amuſing, how inſtructive, had been the hiſtory of univerſal emigration, had it been written with the accuracy of records, had it been tranſmitted with every circumſtance of credibility. Yet, with regard to the colonial policy of the wiſeſt and freeſt nations of antiquity, the Greeks, the Carthaginians, the Romans, ſufficient evidence happily remains to illuſtrate its nature and to inform the world. When the ſtates of the former, either from a ſituation extremely circumſcribed or from their peculiar inſtitutions, became overſtocked with inhabitants, they ſent out their ſupernumeraries, who ſettled in the wilds of the earth, *without* the dominions of their native land. Here the emigrants eſtabliſhed a government for themſelves; they enacted their own laws; they choſe their own magiſtrates; they made peace and war with the ſurrounding tribes: And they became independent, becauſe no ſubjection was required by the parent-nation, though they, perhaps, owed gratitude for former kindneſs, and reſpect for preſent good offices. But the new ſituations, at which communities arrive by alteration of circumſtances, change their whole policy. And the Perſian invaſion is no leſs remarkable for the celebrity which it conferred upon Greece than for the total revolution it produced with regard to the Grecian colonies. Two of the moſt renowned of her ſtates, Athens and Sparta, from that epoch conſidered their coloniſts as ſubjects, becauſe they had now diſcovered the importance of the union of force and of counſels. And they, from this time, regulated their affairs; they impoſed taxes for the uſes of the public: And they compelled obedience and payment by fire and the ſword. While we admire the wiſdom of uniting the citizens in one common cauſe we muſt not approve of the barbarity with which this policy was often enforced.'

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Though the hiſtory of Carthage, owing to the lamentable fate of this mighty nation, is extremely obſcure, ſufficient teſtimony remains to point out the nature of her provincial regimen. Animated alone by the ſpirit of commerce, the Carthaginians reſtrained the trade of their ſubordinate territories; they excluded the traffic of other nations with peculiar jealouſy; they regulated their domeſtic œconomy; they impoſed taxes, exorbitant and oppreſſive: And, with a rigour which would at preſent diſguſt the world, they compelled all to obey. The provincials had but too much cauſe to lament that they were the ſubjects of a democracy, which at laſt even ſacrificed itſelf to avarice or to faction.[2]

The commencement of the Roman emigrations muſt have neceſſarily been nearly as ancient as the date of the Roman conqueſts. But, neither urged by the diſtreſs of the former, nor inſpired by the commercial ardour of the latter, the Romans were governed by maxims different from both. And their colonies conſiſted of a number of citizens, ſent out by the authority of the ſtate to form eſtabliſhments *within her dominions*; either to enjoy lands given them as a gratuity, or to compoſe a military barrier for the defence of her frontiers. For this mighty people derided maritime affairs, and deſpiſed commerce, becauſe both were incompatible with the form of their conſtitution. The coloniſts made laws for their local government, but they were ſubject to the edicts and general ſuperintendence of Rome. And, aſſeſſed by the ſenate, they contributed, though not always without complaint, their proportion of taxes, which were the badges of the Roman dominion, to the ſupport of the Roman power. They formed therefore no independent ſtates. The irruption of the northern nations at length put an end to their provincial eſtabliſhments, the characteriſtics of which were oppreſſion and tyranny.[3] When Rome loſt her liberty, her provinces rejoiced, becauſe they thence dated the epoch of their own freedom. The moment ſhe had loſt her military barrier, becauſe they did not feel for her fate, ſhe ſhrunk into herſelf, and expired.

When actuated by a mixture of the principles of Carthage and Rome, England tranſplanted her ſubjects to the new-world, ſhe already poſſeſſed, from the moſt ancient times, various territories, lying *without the realm*, though

though *within the limits of the empire*, and dependent on the ſtate. The kingdoms of Ireland and Man, the iſlands of Guernſey, Jerſey, and others, had for ages confeſſed her power and obeyed her laws.[4] Like the municipies of the Romans, they had always enjoyed the beneficial privilege of enacting local regulations, ſuitable to the neceſſity of their own affairs; but neither inconſiſtent with the nature of their connexion, nor repugnant to the general juriſprudence of England: And though not uſually obliged to obſerve the rules of action preſcribed by the ſupreme legiſlature, becauſe they were not ſuppoſed to be in its daily contemplation, yet, when neceſſity or convenience required its univerſal ſuperintendence, all were bound to obey. For the obligation of the inferior to ſubmit to the dictates of the ſuperior is dependence: And, in proportion as obedience is denied or withdrawn, independence begins. Hence, the law of England has inferred, that the legiſlatures of dependent territories can make no change, with regard to the nature of their relation, nor declare themſelves leſs ſubordinate than formerly. For, though they enjoy legiſlative power, it is not ſelf-created or abſolute, becauſe England would have no more power over them ſubſequent to ſubordination than before. Similar to the *Latin privilege* of the Romans, theſe provincials enjoyed exemption from the *ordinary juriſdiction* of the Engliſh judicatories: And juſtice was adminiſtered in the *firſt inſtance* in the provincial courts, according to provincial uſages and laws. But, though none had ever been reſerved by the charters of Engliſh kings, yet an appeal had been always carried from theſe to the tribunals of England. For the power of application to the fountain of juſtice, for the redreſs of wrongs, is an eſſential privilege of every Engliſhman, of which he cannot be deprived, except by an act of the ſovereign legiſlature, wherein his own aſſent is included. The law permitted in the inferior country might be otherwiſe inſenſibly changed without the conſent of the ſuperior. And judgements might be given in diminution of the ſuperiority, or in converſion of the dependence on the political capacity to that of the perſon of the prince.[5]

The ſovereign legiſlature, thus co-extenſive with the then limits of the empire, poſſeſſed a power, which, as we are aſſured by the wiſeſt practical

cal writers [6] on the law of England, was ſo tranſcendent in its nature, that it cannot be reſtrained either as to perſons or to cauſes. For, were its authority confined to leſs ſpace than the limits of the empire, or to fewer perſons or things than all, it would not be legiſlative and ſupreme. The principle of the common law, always founded in ſtrong ſenſe and in ſound policy, could amount only to this, that the nation, however diſperſed as to ſituation and compoſed as to numbers, muſt have authority to make laws in all caſes whatſoever for herſelf; ſince inconveniences might otherwiſe exiſt, and even the diſſolution of the whole enſue, without any adequate power to apply a remedy. This tranſcendent power, inveſted by the wiſdom of our fathers in the legiſlature, whether denominated a wittenagemot, a great council, a parliament, has been at all times exerciſed with an approbation, in proportion to the importance of it, from the remoteſt period of her annals to the preſent times. And, compoſed of the king, of the different eſtates of the realm, it forms the great body politic of the empire, or, in other words, the empire itſelf. In whatever manner may have been created the political compact, which originally united the ſeveral perſons for common ſafety, every individual was ſubjected by it to the body of aggregates in whatſoever related to the general welfare. The authority of all over every member muſt neceſſarily be every where lodged in the ſtate, wherever it may be inveſted, according to the different forms eſtabliſhed in different countries. And the individual can no more ſay, I will no longer obey the rules preſcribed by the ſupreme power, than can one of the republics which compoſe the ſtates of Holland declare, I will no more be a member of your aſſociation. As nature hath given every man an abſolute power over his limbs, to move and direct them at pleaſure, ſo the ſocial compact, ſays Rouſſeau, that genuine ſon of independence, gives to the body politic abſolute power over all its members, and it is this power, which, directed by the general will, bears the name of *the ſovereignty*.[7]

Few doctrines are too abſurd or deſtructive not to have been propagated and defended by the leaders of faction at all times, and in every country. We ought not to be ſurpriſed, therefore, that even the juſt authority of the legiſlature has been impugned by different men, with different views. In other

other times objection was only formed againſt one part of its authority. And it was formerly contended, with a greater ſhare of plauſibility than force, "that inſufficient was the power of parliament to change or regu- "late the deſcent of the crown." When we conſider, however, the various inſtances in which this eſſential right had been exerted from the acceſſion of Henry IV. to that of Elizabeth, it muſt appear ſingular that any doubt ſhould have been entertained of the extent of parliamentary power. We muſt attribute it to the extreme pertinacity of mankind, when influenced by party motives, that, notwithſtanding the vigorous declarations of the parliament during the reign of that princeſs, the ſame objections were continued throughout the ſubſequent age. And the year 1680 is remarkable in Engliſh annals, not only for being the epoch of the juſtly exploded party names of Whig and Tory, but for thoſe projects for excluding the duke of York from the throne, which created ſo great a ferment towards the concluſion of the reign of his brother. But it was apparent to every one, that, were the authority of parliament incompetent to alter the ſucceſſion, an act of excluſion would paſs to little purpoſe. The two great parties of the nation prepared, the one to impeach, the other to defend, the power of the legiſlature. When the bill was debated by the commons, the whigs very properly contended in its favour: That, government being founded by accident rather than in natural right, the rules of mere poſitive inſtitution muſt be ſubject to the legiſlature, ſince they derived their energy from its will; that there muſt be lodged conſequently ſomewhere, in every ſtate, an authority abſolute and ſupreme, the great fountain of the laws, which all muſt revere and obey; that, in the Engliſh conſtitution, this tranſcendent power is happily placed where it is moſt ſafe, in the parliament, which, compoſed of every order of the ſtate, muſt neceſſarily poſſeſs the will, the energy, of the ſtate; that whatſoever determination receives the powerful approbation of its ſanction cannot afterwards admit of any diſpute or controul, ſince there would be no end to alteration, and the whole might be undone. But againſt reaſonings, which, during thoſe days, it was ſo difficult to anſwer, becauſe they were popular, becauſe they proceeded from the voice of the laws and the people, the courtiers and tories inſiſted: That it was ridiculous to ſpeak

of an authority altogether abſolute, ſince ſuch was to be found under no form of government, and omnipotence itſelf can do nothing inconſiſtent or impoſſible; far leſs could ſuch a power be inveſted in judicatories, compoſed of men ſubject to human infirmities, ſince every exertion muſt partake of their weakneſs; and, conſequently, acts of parliament may eaſily be figured, which muſt neceſſarily be deemed void, either from the defect of their formation, or from the impoſſibility of execution.[8] The fate of the bill; the conſequent acceſſion of James II. the following reſolution: All have been related by writers of the greateſt talents, and are univerſally known. Upon the before-mentioned principles of the whigs was founded the intereſting event which placed William on the throne; upon thoſe principles has the preſent happy eſtabliſhment been defended by the beſt and ableſt friends of the conſtitution;[9] upon no other can the rectitude of both be poſſibly ſupported. The maxims of the law of England will be found too ſtubborn to give way to the ſpeculations of theoriſts, however ingenious or reſpectable.

How amuſing is it to contemplate the viciſſitudes of thoſe parties, which, under different forms, muſt ever exiſt, while freedom animates the whole. How frequently do they inſenſibly change their principles and imperceptibly take the place of each other. All in their turns have employed force to ſupport their ſentiments, when they have found their reaſonings and intrigues unſucceſful. Hence the various inſurrections, whether denominated rebellion or reſiſtance, which have diſturbed the repoſe of the ſtate, from the Revolution to the preſent day, have been uniformly directed againſt the conſtitutional authority of the legiſlature before-mentioned, againſt the principles of the whigs of 1680. Meanwhile, a new ſet of men have ariſen, who, adopting the ſentiments of the tories, though with very different views, have inferred: That, though a king of England may be bound, though the deſcent of the crown may be limited by parliament, yet, that Engliſh ſubjects, living within the boundaries of the empire, claiming rights from Engliſh laws, are exempted from the authority of the Engliſh legiſlature.

Such then was the power of parliament, and ſo extenſive its juriſdiction at the æra of American colonization, during the reign of James I.

Nothing

Nothing could be more perceptible than the policy which directed the colonies of the ancients: Nothing can be more obſcure than that which governed thoſe of the Engliſh. England did not require a vent for her ſupernumeraries like the Grecian ſtates; like the Carthaginians, ſhe could not expect to promote her commercial intereſts by trading with ſavages, miſerably poor, becauſe they deemed all labour diſhonourable; no military barrier was formed, no donations were made, ſimilar to thoſe of the Romans. It was rather the example of the Spaniards than the practice of thoſe renowned nations which was copied, becauſe ſimilar ſucceſs and wealth were expected. Prompted by his ambition, perhaps more by his vanity, the primary deſign of that monarch was, to ſhare in the gold and ſilver which were expected from mines, to rule the colonies in the ſame manner as he had propoſed to govern Ireland,[10] as territories belonging to his perſon, and therefore ſubject to his will; though his ultimate views are not ſo eaſily diſcerned. The great corporations, which have acquired the honour of planting the firſt permanent ſettlements, had no other object, probably, than the expectation of ſudden gain from the working of mines, a project, of all others, the moſt deluſive, the moſt to be diſcountenanced by nations which regard their own good. The moſt early emigrants ſeem to have been carried blindfold acroſs the ocean, who probably hoped to make ſudden fortunes and to return: They who ſucceeded them were animated by deſire of melioration, by ambition, by religion. The colonies could acquire no other rank within the pale of the Engliſh empire than was then enjoyed by the other ſubordinate territories of the crown; the coloniſts could partake of no other privileges than were then poſſeſſed by the other provincials, whoſe rights had been preciſely aſcertained, and were perfectly known. Subjects of James, prior to their emigration, as he ſtood related to the nation in his political capacity, change of reſidence from one part of the empire to another made no alteration in the nature of their connexion. For from the moment of their birth they had received protection; in return, as a debt of gratitude, they owed fidelity; which, we are aſſured, can neither be cancelled nor altered except by an act of the legiſlature, that includes the aſſent of the whole: They had derived a benefit from the ſtate, and

without its conſent they could not ceaſe to be members of it. Nor can the allegiance of the ſubject be circumſcribed within any bounds, becauſe it is co-extenſive with the protection of the king, which is univerſal during peace by the exerciſe of government, in war by the ſword. And it is neither the climate nor the ſoil which form a citizen, becauſe the common law regards all as natural ſubjects who are born under the authority of the ſame king; nor would the children of enemies, who forcibly entered the realm and poſſeſſed a town, be otherwiſe conſidered than as aliens.[11] Theſe ſalutary principles, not of the law of England only, but of every nation, were expreſſly enforced by the colonial charters, which gave the coloniſts leave to emigrate, which declared, that change of habitation ſhall make no alteration in their allegiance: And requiring the oath of fidelity to be adminiſtered to them added the ſacred tie of religion to the obligation of natural duty. Like the Roman coloniſts, they remained as much citizens in their new habitations, as they had been in the old.

The American emigrants ſettled in a region which was regarded by them as a territory of the Engliſh empire, becauſe it had been firſt diſcovered and firſt occupied by virtue of commiſſions under the great ſeal of England. The validity of this title had been recognized by the approbation and practice of the European world. And it had been confirmed by the law of nations, which ſternly diſregarded the poſſeſſion of the aborigines, becauſe they had not been admitted into the ſociety of nations. When we throw our eyes over the globe, it muſt appear that it is not the perceptible boundaries of nature, a mountain or deſert, a river or an ocean, which form a ſtate. For it is an incorporeal thing, a body politic, compoſed of aggregates of men; who, uniting for mutual advantage, are fellow-ſubjects of the ſame ſovereign, who are ſubjected to the ſame legiſlature, who owe obedience to the ſame laws. And our country, therefore, is the nation of which we are members, and not the town, the county, or the province, where we firſt ſaw the light. When a wilderneſs is conſequently peopled, and a colony is planted, however ſeparated and however diſtant from the principal eſtabliſhment, it becomes a part of the ancient dominions, and equally compoſes the common country of the ſame people.[12] Unlike the ancient Grecian colonies, the

the Engliſh American plantations formed, therefore, no diſtinct communities. And they inſtantly became territories of the Engliſh nation. Such were they recognized by the various charters, which the anxiety of the emigrants procured, which uniformly declared; "that the colo-"nies were eſtabliſhed with a view to extend and to enlarge the bounda-"ries of the empire." It inſtantly became a fundamental principle of colonial juriſprudence, that, in order to form a valid title to any portion of the general dominion, it was neceſſary to ſhew a grant either mediately or directly from Engliſh monarchs. And this ſuggeſts the principal cauſe of the general ſolicitude to procure patents from the ſovereigns of England at every period, becauſe in them the whole was ſuppoſed to be inveſted.

Continuing as much ſubjects in the new eſtabliſhments, where they had freely placed themſelves, as they had been in the old, the coloniſts carried with them their birth-right, the laws of their country; becauſe *the cuſtoms of a free people are a part of their liberty*. The juriſprudence of England became that of the colonies, as far as it was applicable to the ſituation at which they had newly arrived; becauſe they were Engliſhmen, reſiding within a diſtant territory of the empire. And we have beheld the wiſeſt of the emigrants, who had been born within the realm, whoſe affections were yet warm, enforcing, by poſitive acts, this ſalutary principle of the common-law. When the legiſlative energy of theſe declarations had ceaſed, even colonial lawyers were often perplexed to decide what part of the laws of England extended to the colonies, what remained a dead letter, what judicatories they ſhould apply to for a ſolution of their difficulties. But have not Engliſh lawyers often differed in opinion with regard to a precept of the common-law; have they not conſtantly appealed to the courts of juſtice, becauſe theſe form the great depoſitary of the laws? In the ſame manner the provincial tribunals decided, in the firſt inſtance, which of the laws of England were ſuitable to their circumſtances; which were, therefore, to be conſidered as a rule of action: And their former deciſions and daily practice are *authorative evidence* by which all are concluded. Hence we may infer that, in different provinces, a different rule may prevail, becauſe their ſituation

tion may be extremely diſſimilar. In theſe provincial judicatories wrongs were redreſſed, and right was diſtributed, becauſe the eaſy acquiſition of juſtice is an eſſential privilege of every free ſubject. But an appeal lay from all theſe to the ſupreme tribunal in England, becauſe every Engliſhman enjoys it, as a part of his liberty, to apply to the fountain of juſtice; becauſe the nation was intereſted that judgements ſhould not be given which might affect the relation between the territories and the ſtate. Though this is a fundamental principle of the common-law, it was not eaſily ſubmitted to by the coloniſts, becauſe they thought it unſuitable, and it mortified their pride. But it was ſteadily enforced by England, becauſe it was eſſential to her juriſdiction. And we may thence infer the nature and the uſe of the general rule.

As members of the ſame ſtate, the coloniſts are aſſuredly entitled to the ſame liberties which are enjoyed by thoſe whom they had left within the realm: They had a right to poſſeſs every immunity which Engliſhmen, within a diſtant and ſubordinate territory of the empire, can poſſibly enjoy. They were entitled to *perſonal ſecurity*, to *private property*, and, what is of moſt importance of all, to *perſonal liberty*; though the foregoing Annals demonſtrate that the two firſt they enjoyed previouſly, the laſt they poſſeſſed not at all, ſince the effectual remedy, the writ of habeas-corpus, they did not happily know. For they forfeited nothing by their emigration, becauſe it was made with the conſent of the ſtate: And this eſſential principle of the common-law their charters declared and enforced. Nevertheleſs, an Engliſhman born within the realm, however diſtinguiſhed for his birth, his talents, or his wealth, who, from motives of ambition, or pleaſure, or intereſt, chooſes to reſide in Minorca, in Man, or the Plantations, becomes in every reſpect a Minorkin, a Manks, or a Planter, and can enjoy no right diſtinct from the other inhabitants. For the law and legiſlative government of every dominion equally affect all perſons and property within its boundaries, ſince voluntary reſidence ſuppoſes implicit conſent. The proudeſt peer of the realm, who emigrates to a colony, cannot exerciſe the important rights of the peerage. The moſt eloquent member of the houſe of commons, who follows his example,

example, would no longer enjoy his privilege. And the freeholder of Middleſex, who wiſhes to enjoy colonial freedom, could no more vote for his favourite candidate. Yet their various rights are merely ſuſpended by their own choice; becauſe, to enjoy them completely, perſonal preſence is neceſſary. And, being under no one diſability, but what diſtant habitation impoſes, the coloniſts retain a moſt important right, which aliens do not poſſeſs: They may, at any time, return to England, and become electors of a borough or county, ſheriffs or aldermen, members of parliament or miniſters of ſtate. For the liberality of the law of England makes no difference between perſons born in Europe or Aſia, Africa or America, provided they draw their firſt breath within the pale of the Engliſh empire, under the obedience of the Engliſh government; provided they are ſubjects. Yet colonial juriſprudence has not been equally liberal: And it lays Engliſhmen under conſiderable diſabilities, though nothing can be more contrary to principles. During a limited time they are excluded from offices, from the provincial legiſlature; they are taxed without their conſent; their trade is reſtrained; and they are not admitted into courts of juſtice, as ſuitors, on equal terms. They have ſubmitted to diſadvantages in quiet: The coloniſts have not ſuffered the inconveniences of their ſituation without complaint, though they have generally enjoyed all the advantages of it.[13]

We may therefore conclude that the Engliſh coloniſts are extremely different from the provincials of the ancient or modern *democracies:* The former are fellow-ſubjects of the ſame king, fellow-members of the ſame ſtate; the latter were ſubjects of the *people*, and could partake conſequently of none of their privileges: And it was to little purpoſe for theſe to reſide at Carthage or Rome, ſince they were not deemed citizens who could enjoy their rights. We may illuſtrate theſe principles by the fate of the Corſicans, an unfortunate people, whoſe viciſſitudes have been always lamentable; who have, at length, found freedom in their recent ſubjection. In former times they were the ſubjects of the Carthaginians, who "forbad their planting, ſowing, or doing any thing of the like "kind, under pain of death:" The Genoeſe granted them an act of indemnity, in 1738, which, to the aſtoniſhment of mankind, ordained, that

that they ſhould no longer be condemned to bodily puniſhment, in conſequence of the private knowledge of the governor: Men, who were thus deprived of the common rights of human nature, could not enjoy the privileges of the citizens of Carthage or Genoa.[14] The Corſican and the Pariſian are now equally ſubjects of the ſame monarch, and, conſequently, are equally entitled to the ſame immunities; both are in the ſame manner Frenchmen, and therefore muſt be governed in a ſimilar mode. As preſervation is what ought to be chiefly regarded in conqueſts, a king of France can find no intereſt in oppreſſion: And the conquered provinces of this nation are, accordingly, the moſt gently governed of any, enjoying privileges which the others do not poſſeſs. When Auguſtus erected a throne upon the follies and vices of the citizens of Rome, the Roman provincials, in the ſame manner, acquired freedom; becauſe they were now ranked as the fellow-ſubjects of the ſame prince, who were entitled to the ſame rights, who enjoyed the felicities, and ſhared the adverſities, of that mighty people.[15] Such is the infallible courſe of things, and nature will be obeyed!

When a conqueſt is atchieved or a colony is ſettled by a monarchy, it naturally extends its own form of government to them. It is eaſy to appoint a governor and to erect tribunals; and the policy of France and of Spain is completed. But what ſhould we ſay of the governor of a French or Spaniſh colony, who declared: I will be no longer the ſubſtitute of my prince; I will no more govern his people in his name; I will be a king. When plantations are formed or conqueſts are made by a democracy, it will, perhaps, aſſociate them with itſelf, admit them to a ſhare of the government, to equal privileges, according to the practice of the Romans, before diſtant conqueſts had corrupted their minds: They form, conſequently, a part of the ſtate itſelf, and are no longer conſidered as a province or a colony. But how ſeldom this wiſe policy has been purſued by republican governments, becauſe diſtance, perhaps the ſelfiſhneſs of the people, forbad it, all hiſtory demonſtrates. The conduct of the ancient republics has been already noticed. What immenſe regions has Holland acquired by conqueſt or coloniſation, yet ſhe has not yet added an eighth province to the ſtates. When *ancient* Maſſachuſets,

Maſſachuſets, which was really a republic, purchaſed Main of its proprietor, ſhe immediately reduced it to the form of a province, excluding it from any participation in her own government or privileges. Democracies have at all times ruled their dependencies, under a monarchical form, by governors, who have but too often exerted the rigour of conquerors, becauſe the provincials were deemed ſlaves rather than fellow-citizens, becauſe, by means of bribery and intrigue, the governor may eaſily procure impunity from the factions of his country. Though the form is plainly monarchical, yet the inhabitants enjoy none of the benefits of monarchy, becauſe, the power of ſuch a magiſtrate being regarded with jealouſy, the duration of his commiſſion is limited, and he is always rapacious in proportion to its extent. The miſerable provincials, enjoying the advantages neither of a republic nor a monarchy, always think with deteſtation of the government of their ſuperiors: They look up with envy to their happier lot, and therefore feel the more ſenſibly their own degradation. And hiſtory accordingly demonſtrates, that the provincial government of democracies has at all times been odious to the ſubjects of it. For, the tyranny of one man muſt always be leſs ſevere than that of a million; the former may be naturally mild, humane, and wiſe, the laſt muſt ever partake of the paſſions of the multitude.

When the Engliſh colonies were planted, the principles beforementioned were applied to them, becauſe they are founded in the nature of things, and muſt be therefore always permanent. Adopting the maxims of their immediate predeceſſors, James I. and Charles deemed the monarchy of England as unlimited in its extent as either France or Spain; diſregarding the rights of the different eſtates of the realm, the privileges of the people, they could not eaſily admit, becauſe it ſeemed to degrade themſelves, that the lords and commons, when aſſembled in parliament, formed eſſential parts of the ſupreme power; they did not conſider, that Engliſh ſubjects could not be ſubjected to any rule of action, or to any burden that had not been commanded or impoſed by the legiſlature, whoſe acts contained their conſent. Theſe princes, therefore, miſtakingly inferred, that they might govern the dependencies of England in the form of conquered countries by their prerogative alone.

And they acted as legiſlators for the colonies; erecting either corporations within the realm for their adminiſtration, or eſtabliſhing provincial ſyſtems, equally unſuitable. The moſt ancient government of Virginia, we have ſeen, was ariſtocratic, which was ſoon changed to monarchical; and to both theſe forms was added a democracy by the Virginian company: And this province now acquired a mixed conſtitution, reſembling that of England in its appearance, though not in its nature, becauſe the one was ſubordinate, the other was ſovereign. Yet Virginia enjoyed neither proſperity nor happineſs, becauſe ſhe was placed in a ſingular ſituation; ſhe was really ſubjected to the regulations of a commercial company, to a republic within the realm, and at the ſame time to the edicts of a monarch. When this ſingularity was removed by the diſſolution of the charters, the Virginians acquired freedom in the ſame manner as the Roman provincials, upon the acceſſion of Auguſtus, becauſe they were now ruled by a form purely monarchical. Diſregarding equally her charter, and the laws of England, Maſſachuſets eſtabliſhed for herſelf an independent government, extremely ſimilar to thoſe of the Grecian colonies. But, that may well be regarded as uſurpation, which is founded in no right. Maryland was erected into a province of the Engliſh empire; her proprietary was declared a feudary of the Engliſh nation. And, owing partly to the prudent ſagacity of Sir George Calvert, who procured the charter, but more to the good ſenſe of his ſon, who carried it into effect, a mixed form of government was eſtabliſhed, perfectly ſimilar to that of England, and perfectly agreeable to the maxims of her juriſprudence. However inconſiderable, the hiſtory of few nations offers better leſſons of inſtruction to rulers and people than do the annals of this province.

But it was not till the civil wars, and the Reſtoration had decided the nature of the Engliſh conſtitution, had marked out and fixed the various powers of each component part of it, that the nation gave to her provinces permanent ſyſtems, analogous to her own. It is, however, moſt apparent, that a colony might have been governed agreeably to the principles of Engliſh law, without a colonial legiſlature or colonial courts of juſtice. Every town, or every county, does not enjoy either. Had an act

act of parliament, ſimilar to that of Henry VIII. with regard to Wales, been paſſed, ſo extenſive in its powers, ſo comprehenſive in its proviſions, as to eſtabliſh a complete ſyſtem of juriſprudence, to preclude the neceſſity of future laws: Had the coloniſts been directed to apply for juſtice to the judicatories within the realm; nothing more had been wanting than a governor to execute the whole; the provincials had enjoyed the privileges of Engliſhmen: They might have experienced inconvenience, but they could have felt no grievance, which always ariſes from the invaſion of rights. Had the ſupreme legiſlature continued to make laws for the colonies, as new ſituations demanded new regulations, no territorial legiſlature had been wanted. But, as it would have amounted to a denial of juſtice, which is a grievance of the greateſt magnitude; as the ſupreme power could not yearly provide for the annual wants of a little people; colonial tribunals, and colonial legiſlatures, became neceſſary. The parliament might have eſtabliſhed a legiſlative ſenate, compoſed of a governor and a few coloniſts of the greateſt wealth and experience, becauſe the parliament might have made laws for the people. As it was, however, the charters, the commiſſions, the inſtructions of the king, which created the provincial conſtitutions, it became neceſſary to admit the coloniſts to a participation in the legiſlative power. For, a king of England could not confer powers, which he did not himſelf poſſeſs: And he could not impoſe a rule, or a duty, without the conſent of thoſe, who were to feel the influence of both. We here diſcover the principles, upon which their ſyſtems were founded: They muſt have been neceſſarily limited in power by the uſe and neceſſity which gave them exiſtence.

Vain is it to ſearch ancient or modern annals for examples of provincial conſtitutions ſo liberal or ſalutary as thoſe which England gave to her colonies. She conferred on them a counterpart of that mixed form, which ſhe herſelf enjoyed, which had engaged the attention and procured the panegyric of nations. The governor repreſented the king, and performed his functions; the council acted as the ariſtocratic branch, and anſwered its uſes; the delegates formed the democratic part of the ſyſtem, and gave a kind of energy to the acts of the whole, becauſe they declared the aſſent of the governed. But what would the world have pronounced of a gover-

nor, who had inſiſted: I will no longer obey the inſtructions of my ſuperior; becauſe I will be a king? What ought we to ſay of a council, which ſhould decide: That no appeals ſhall be carried from our judgements; ſince we claim all the rights of the peerage? Is it not equally contrary to principles, for the delegates to contend: That we are entitled to all the rights of the commons; becauſe we repreſent the inhabitants of a diſtrict of the empire; becauſe the whole may exert all the powers of every part? With regard to the authority of the two former, little controverſy has ever ariſen. The governor was neceſſarily bound by his inſtructions, becauſe he acted merely as a ſubſtitute, though even theſe could not empower him to do what the law had prohibited, what a king of England could not himſelf perform: And he exerciſed the legal prerogative of the ſupreme magiſtrate, by ſuperintending the general government, by appointing officers and magiſtrates, by cauſing to be executed whatſoever the legiſlature had commanded. The counſellors were extremely analogous to the peers, though their office was not deſcendible, ſince it was defeaſible. As privy-counſellors of the governor, they were bound by inſtructions, by the laws: As the court of *local* appeals, they were governed in their deciſions by the principles of the common law, by territorial regulations, by their own cuſtoms; but an appeal lay from their judgements, becauſe they were not ſupreme: As a conſtituent part of the legiſlature, their power was only limited by the good of their country, by the maxims of their connexion with the ſtate, with the parent country. The principal difficulty has ariſen, with regard to the powers and pretenſions of the delegates, though during the foregoing period both were extremely limited when compared with thoſe they afterwards acquired. For they claimed, though they did not always exerciſe, all the privileges of the commons. As an eſſential branch of the provincial legiſlature, they poſſeſſed fully all the authority of the counſellors, but they could rightfully claim no more. Nothing can be more incongruous in reaſoning, than to apply principles of analogy to two bodies in no manner analogous. The commons, when aſſembled in parliament, poſſeſs an eſſential portion of the ſovereignty of the Engliſh empire: The delegates form a component part of the legiſlative power within a dependent province.

province. The powers of the former cannot be circumſcribed, becauſe they are ſupreme: The authority of the latter may be defined, becauſe it is ſubordinate: The eſſence of the firſt is derived from the conſtitution itſelf: The origin of the laſt is to be found in the royal charters, commiſſions, and inſtructions, in the principles of the common law, in their own *legal* uſages. In the various diſputes between the two houſes of aſſembly, with regard to their mutual privileges, nothing is more ſtriking than the general imbecillity and indeciſiveneſs of the reaſonings of the counſellors, becauſe they were afraid to avow the truth, they were aſhamed to uſe arguments which degraded themſelves. They might have inſiſted: Why do you pretend to an origin more ſacred than ours, ſince both are perfectly known, and both are derived from the ſame ſource; from royal charters and commiſſions? Any more than us, you can claim little power from the freeholders, who choſe you, becauſe, being themſelves only inconſiderable members of a great people, their voice muſt be feeble, in oppoſition to the voice of the whole, their rights muſt be circumſcribed by the intereſts of millions: Wherein is the pertinency of your claiming privileges, for no other reaſon, but that they are exerciſed by the commons of England, a ſovereign power, and you are only a ſubordinate body, the delegates of an inconſiderable diſtrict? Demonſtrate your ſupremacy, and we ſhall freely admit the validity of your pretenſions: With the ſuperaddition of the governor, what do we all form but a local legiſlature, whoſe laws reach not beyond our boundaries, whoſe powers muſt be limited, ſince they are not ſupreme, whoſe authority is circumſcribed by the nature of our inferiority, by the principles of our relation to a great empire, by the common laws of the ſtate? It is eaſy to perceive, that the delegates, in order to have anſwered theſe reaſonings with tolerable accuracy and candour, muſt have uſed topics, which neceſſarily lead to independence. As, however, the counſellors enjoyed a judicial authority, the delegates properly exerciſed the power of complaining of grievances, becauſe their conſtituents poſſeſſed the ſame right, and might transfer their immunities to their repreſentatives: But they could not impeach, becauſe there exiſted no authority that could properly decide; they could not puniſh, becauſe they could not

not regularly enforce their judgements, ſhould they be oppoſed. And as they were the general protectors of the privileges of the people, they could eaſily remove officers, and even the governor himſelf, by thoſe arts, which popular aſſemblies ſo well know how to uſe, to promote the intereſts of freedom, or to anſwer the purpoſes of faction.

The rights of the governor, the council, and delegates, when convened in aſſembly as one legiſlature, were founded in ſimilar principles; the legiſlative power muſt have been neceſſarily directed by its nature and uſe. If it was merely local, its juriſdiction could extend no farther than the limits of the ſoil: If it was ſubordinate, its powers could not be ſupreme. The foregoing Annals have ſhewn how the colonies were ſucceſſively formed, in what manner they were eſtabliſhed independent of each other. And there was, conſequently, no confederacy between them, any more than there was an alliance with the colonies of France or Spain; nor was there any other connexion than as they were equally members of the ſame ſtate. The aſſembly of one province could not therefore make laws for another; could not confer privileges which were to be enjoyed or exerciſed without its boundaries: And we have ſeen acts of naturaliſation paſſed without giving the alien any other than local rights. We may thence infer that the colonial legiſlature could make no laws for the parent country, becauſe it had derived its being from a king of England; who could himſelf make none, becauſe the inferior never preſcribes rules of action for the ſuperior. As each colony eſtabliſhed regulations only for itſelf, as it was excluded from all connexion with foreign territories or foreign ſtates, the provincials never were admitted into the community of nations, and could derive conſequently no privileges from the law of nations. The various plantations formed therefore no more than the dependencies of a great kingdom, which directed their affairs. And they enjoyed no portion of ſovereignty; becauſe, to enable a ſociety to make an immediate figure in the grand community of the world, it muſt govern itſelf by its own authority, by its own laws, in the ſame manner as the moſt ancient colonies of Greece. The various tribes which had once paſſed under the yoke of the Romans no more formed independent ſtates, though they were often flattered with the appellation

pellation of allies and friends: They were generally, indeed, permitted to rule themſelves *within* by their own magiſtrates and juriſprudence, but *without* they could form no alliance with other nations, becauſe they were in all things obliged to follow the orders of Rome.[15]

Such was the political condition of the Engliſh colonies, with this favourable exception, that the coloniſts enjoyed perfect freedom, while their legiſlatures alone were reſtrained; or, in the language of Monteſquieu, "the people were free; the ſtates were enſlaved:" And the provincials could, in no reſpect, be inferior to Engliſhmen, becauſe both were equally ſubjects of the ſame king, fellow-members of the ſame ſtate; and, when Engliſhmen emigrated, they equally became provincials: The colonial legiſlatures were only ſubordinate, becauſe they were neither coordinate nor ſupreme. Theſe ſalutary principles of common ſenſe and of common law were expreſſly enforced by the various royal charters, commiſſions, and inſtructions, which gave the colonies power to legiſlate, which uniformly declared: That, while you eſtabliſh regulations for internal government, let them be agreeable to reaſon and to the juriſprudence of England. Notwithſtanding this cautious limitation, the aſſemblies might abrogate every part of the common law, except only thoſe maxims which united the territories to the ſtate; every part of the ſtatute law, except thoſe acts of the ſupreme legiſlature which expreſſly preſcribed rules for the coloniſts: When the common law declared; that appeals may be carried from provincial courts to the tribunals of England, an aſſembly could not declare they ſhould not: When an act of parliament directed; that you ſhall carry no tobacco to France nor import manufactures from Holland, an aſſembly could not give permiſſion to do either. With the juſt limitation before-mentioned, a provincial legiſlature ſeems to have been ſovereign within its colony, otherwiſe it would not have been legiſlative: And all perſons and all property within its boundaries muſt therefore have been ſubject to its power. For even an alien, who poſſeſſes no will, muſt obey the laws of the country where he enjoys protection, ſince reſidence carries with it conſent. The power of the aſſembly to enact laws neceſſarily flowed from its being the legiſlature: But what empowered it to impoſe taxes for local purpoſes, to

transfer

transfer property? The Virginian aſſembly, which firſt exerted this extraordinary authority, had not been enabled by any grant from the company or the king. Subſequent charters and commiſſions ſupplied a deficiency which was rather imaginary than real. A provincial legiſlature muſt neceſſarily have poſſeſſed the power, as the body politic of the colony, ſince it was inveſted with the authority of every coloniſt, and pronounced the will of the whole, or not at all. For a king of England could not authoriſe others to do that which he could not himſelf perform: He could not impoſe burdens on Engliſhmen, and he could not empower others to tax them. Not only the firſt aſſembly of Virginia, the firſt general court of Maſſachuſets, which had not been *ſpecially authoriſed*, but all others have conſtantly eſtabliſhed duties, becauſe they poſſeſſed legiſlative authority. The power of taxation therefore is inveſted in the legiſlature; and every exertion of it is a mere act of legiſlation: It may be traced up to *implied*, but not to *expreſs*, conſent. If an aſſembly juſtly exerciſes this important juriſdiction for local uſes, becauſe it is the legiſlature of a colony, may not the parliament exert the ſame power for general purpoſes, becauſe they form the legiſlature of the empire?

Nothing can be more ſtriking than the prodigious difference there has always been between the parliamentary and colonial mode of taxation. With regard to ſubjects the parliament has never made any diſtinction, becauſe all in ſimilar circumſtances paid exactly alike: The aſſemblies have univerſally diſtinguiſhed between thoſe who were actually repreſented and thoſe who were not; exempting the former, and impoſing the duty on the laſt, though nothing could be more contrary to principles, to that equality which ought ever to prevail in the impoſition of the general revenue for common uſes. We ought naturally to expect what has been at all times experienced, that it was deemed no valid reaſon for an exemption, that the object of the tax reſided at the diſtance of three thouſand miles: And the reſidents of England conſtantly paid, without complaint, the taxes annually impoſed either on their ſervants or lands. If conſent or repreſentation be neceſſary to legalize the duty, the practice of the aſſemblies has been at all times faulty, the impoſitions always illegal, and the grievances reſulting from both conſequently extreme. That

property

property ought to be ſacred, and ought to be changed even by the legiſlature with the greateſt caution, is a principle in all free governments. Yet, by the various acts of inſolvency which have been ſo often paſſed by the aſſemblies, the debts of the Britiſh merchant were transferred to the colonial debtor. That this delicate tranſaction was effected without the conſent of the creditor, even contrary to his inclination, is moſt apparent. The legality of the practice muſt therefore be ſought for in ſome other principle. The aſſemblies did not act as repreſentatives, but as the legiſlative power of a ſubordinate territory, having competent juriſdiction; and, if this did not give them ſufficient authority, they had none. When property is placed in a country, or a commerce is carried on by which debts are contracted, a benefit is ſuppoſed to accrue, which always carries with it an obligation to ſubmit to the inconvenience: And this neceſſarily infers the implied conſent of the owner. Such are the juſt maxims upon which the aſſemblies have invariably acted, upon which their juriſdictions can alone be ſupported: It is either recent pretenſions, or the declamations of zealots, that have thrown a ridicule on their conduct or reaſonings, ſince both cannot be defended. From the epoch of the Reſtoration to the preſent times the parliament have conſtantly impoſed taxes on every dominion of the crown, and even on ſubjects without the boundaries of the empire:[16] But they have never copied the narrow example of provincial legiſlatures, in exempting thoſe who were repreſented at the expence of thoſe who were not. The local legiſlature exerted a more extenſive authority than even the ſupreme legiſlative power: Both, however, acted as legiſlatures; the one of a province, the other of an empire. If the topics before-mentioned juſtified the former, why ſhould they not be equally applied to ſupport the juſt authority of the latter.

Without entering into a detail of the various conſtitutions of the colonies, which would be foreign to the deſign of the preſent inquiry, which, at a future period, will demand diſcuſſion, we may eaſily infer, from the reaſonings before-mentioned, what were the principles, not only of the law of nations, but of the common law, on which the plantations were originally eſtabliſhed, from which the coloniſts and their judicatories derived their rights. The American region, we have ſeen, was a territory of

the Engliſh empire, and formed a part of the whole, a parcel of the original eſtabliſhment. The emigrants departed with the conſent of the ſtate, and ſettled within the dominions of the ſtate. Though they incurred diſabilities from ſituation they forfeited nothing by emigration; and they continued Engliſhmen, who carried with them Engliſh laws, and were entitled to Engliſh liberties. They claimed ſpeedy juſtice, and local judicatories were erected; they could not be ruled by the edicts of the royal prerogative, and provincial legiſlatures were eſtabliſhed: And the powers of both were limited by the utility that gave them exiſtence. The perſons of the coloniſts remained free; their corporate bodies alone were reſtrained: And their judicatories, legiſlative and judicial, were ſubordinate, ſince they could not be co-ordinate or ſupreme without changing the nature of their connexion. Totally unconnected with foreign nations, the colonies formed no ſovereign nations, becauſe they did not govern themſelves in all things by their own authority and laws: And they were thence ſaid to be dependent, ſince they "did not enjoy "an equal and ſeparate ſtation among the powers of the earth." The dependence, however, did not conſiſt in the inferiority of fellow-citizen to fellow-citizen, but in the ſubordination of the provinces of the nation to the *ſtate*, to the ſupreme body politic, of every individual to the general aggregate, of every part of the empire to herſelf. When the ſupremacy of the parliament and the dependence of the colonies were once formed and admitted, it neceſſarily followed that there could be no limitation to the authority of the one or to the obedience of the other. For the moment that they partake of any part of the ſupreme power they proportionally ceaſe to be dependent: The reſpective duties of ſuperior and inferior, muſt for ever remain ſeparate and diſtinct. We may thence infer: "That a legiſlative authority, not actually limited by the expreſs "terms of its foundation, or by its own ſubſequent acts, cannot have "its powers parcelled out by argumentative diſtinctions; ſo as to enable "us to affirm, that here it can, and there it cannot, bind."[17]

Such were the rights which the coloniſts, as Engliſhmen, were entitled to poſſeſs from Engliſh laws. It ſeems unneceſſary to review the preceding annals, in order to diſcover how far they actually enjoyed them, during

during the foregoing period; becauſe, one truth ſeems apparent: That the ſame mode of government, whether ſalutary or baneful, which prevailed in England, conſtantly extended its influence, either good or evil, to them. The revolution of 1688, and the happy eſtabliſhment which reſulted from it, will be found to have been of no leſs importance in the colonies than in the parent country, becauſe they were equally neceſſary on both ſides the Atlantic.

AUTHORITIES AND NOTES.

[1] Dr. Smith's Wealth of Nations, 2 v. p. 146-7; Hiſt. of the Colonies of the free States of Antiquity, p. 47-134. — [2] Ib. p. 10; Mont. Spirit of Laws, b. 21. ch. 11. — [3] Hiſt. free State of Ant. p. 78-84-106; Whitaker's Hiſt. of Mancheſter, 1 v. p. 325-6. — [4] Coke's 4th Inſtitute, p. 282-7; Coke's 5th Report, p. 22-6. — [5] Ib. 18; Vaughan's Rep. p. 292-300-402; ſee Williams's Rep. 1 v. 329. — [6] Coke's 4th Inſtitute, p. 36; Hale's Power of Parliaments, p. 46-9 — [7] Vattel's Law of Nations, p. 9; Compact, p. 45.

[8] Hume's Hiſt. Eng. 4to. 3 v. p. 317-23-4. — [9] Foſter's Crown Law, 8vo. p. 403-4. — It ought to be remembered, that "the declaration of "rights" aſſerts: That the convention of lords and commons "lawfully, "freely, and fully, repreſented all the eſtates of the people of this "realm." — 1ſt Wm. and Mary, 2d ſeſſ. ch. 2.

[10] James I. with his uſual imprudence, adopted the deſign of governing Ireland as a country held of his perſon, ſimilar to his Scottiſh dominions, and not of the crown of England. And, with this view, he conſulted Selden, that prodigy of law-learning, who probably gave him very ſound advice; becauſe we hear no more of a project, equally unconſtitutional and pernicious. — Vaughan's Reports, p. 432. — But the wiſdom of that monarch's policy, with regard to that iſland, fully compenſates for the erroneouſneſs of his opinion. And he informed the commons, with his accuſtomed vanity, though in prophetic language: "That he

" conſidered the ſettlement of Ireland as one of his maſter-pieces, which " would be an honour to him hereafter." — Com. Jour. 1 v. p. 593-7.

[11] Coke's 7th Rep. p. 7; Hale's Pleas of the Crown, 1 v. p. 68. — [12] Vattel's Law of Nations, p. 90-1.

[13] It may, perhaps, ſtartle an Engliſhman to be told, that he was not entitled to the ſame privileges within a colony as he enjoyed within the realm: Yet it is a truth which ſeems to have been hitherto but little known. The capacity to exerciſe offices of profit and of truſt is deemed in every country of the greateſt importance and eſſential to freedom. The law of England, at the ſame time that it very properly excludes every alien, makes no diſtinction between ſubjects; and, as hath been obſerved, coloniſts may return to England, and inſtantly fill the firſt offices of the ſtate; and during recent times they have been deemed moſt worthy of truſt: Yet an Engliſhman, emigrating to the colonies, is incapable of enjoying colonial offices, till, by reſidence a term of years, he has become completely a coloniſt. — Laws of Maryland, 1704, ch. 93; 1721, ch. 9. — Acts of the other aſſemblies were animated by a ſimilar ſpirit. Under the ancient republican government of Maſſachuſets, none but freemen of the corporation could in any manner participate in the government. The laws of England have declared the veſſels of the coloniſts, as hath already been ſhewn, to be in every reſpect Engliſh: But the acts of aſſembly, formerly cited, have eſtabliſhed a conſiderable diverſity in favour of provincial owners. — Vid. Ant. p. 354-5. — The ſyſtem of Engliſh taxation makes no other difference than between ſubjects and aliens; the coloniſts and Engliſhmen paying the ſame duties: But the acts of aſſembly, before quoted, demonſtrate, that it has been a colonial practice, long, univerſal, and invariable, to tax every ſubject of the crown, while the reſidents, who only enjoyed the privilege of repreſentation, were totally exempted. By the laws of England, ſubjects are permitted to carry on commerce on the ſame footing of benefit: But the ſame acts of aſſembly prove, that the Britiſh merchant cannot traffic in the colonies to equal advantage as the reſidents, becauſe they are ſubjected to peculiar burdens. — Vid. Ant. p. 354-5. — By the bankrupt laws of England, every one is paid his debt in equal proportion: But colonial juriſprudence hath

hath provided, that debts due to Engliſh bankrupts in the colonies, ſhall not be collected till ſecurity ſhall be firſt given, that the claims of the coloniſts ſhall be firſt wholly diſcharged. — L. Maryl. 1704, ch. 29; 1753, ch. 36. — And "country debts have the preference in payments made by "executors before thoſe due to non-reſidents, having regard to the na-"ture of the ſecurity." — Ib. 1715, ch. 39. — Even the Penſylvanians, who, in this reſpect, have been the moſt liberal of any, have inſiſted on "priority of payment to inhabitants." — Laws, p. 19. — The law of England has always *enforced* the payment of debts; the law of the colonies has, at all times, *obſtructed* the recovery of debts. In the conduct of England we ſee the liberality of a legiſlature, which admitted no ſuperior; in the practice of the colonies, we behold the narrow ſpirit, which never fails to pervade ſubordinate powers, becauſe they are always jealous. Whether the coloniſts or Engliſhmen enjoyed the greater advantage is apparent.

[14]Monteſq. Spirit of Laws, 1 v. p. 160; 2 v. p. 63. — Tacitus remarks: That the Roman yoke became eaſier upon the provinces after the diſſolution of the common-wealth. — An. lib. 1. ch. 2. — In Hume's Eſſ. 1 v. p. 18-19. — Such was the fact: The reaſon is apparent; the emperors could find no intereſt in oppreſſing the provincials: And, accordingly, even Domitian, the worſt of them, was careful to prevent the oppreſſion of the provinces. — Ib. 19. — After the conqueſt of Macedonia, by the commonwealth, the Romans paid no taxes. — Monteſq. Spirit Laws, 1 v. p. 208.

[15]Vattel's Law of Nations, p. 10-11. — [16]By the ſtatute of 8th Geo. I. ch. 17. certain ſmall duties were impoſed on merchandiſes imported into Portugal, to be collected by the conſul, in any of the ports of that kingdom. Similar taxes were granted by the 9th Geo. II. ch. 25. to be levied at Cadiz, in Spain. This was extended to Leghorn by 10th Geo. II. ch. 14. — Theſe are ſingular inſtances of parliamentary power, by which a revenue was eſtabliſhed for ſpecial purpoſes, even without the dominions of the empire. The authority of parliament aroſe from its being conſidered as the ſupreme legiſlature of the empire. If theſe taxes were rightfully impoſed, what principle of the conſtitution can be aſſigned,

assigned, to preclude the the same authority from extending the same power to every part of the globe?

17 Mr. Burke's letter to the sheriffs of Bristol: A learned lawyer of Pensylvania, Wilson, who was bred in the school of Dickenson, who wrote "Considerations on the Nature and Extent of the legislative Authority "of the British Parliament," affirms: "That he entered on his disquisitions with an expectation of being able to trace some constitutional line between those cases, in which the Americans ought, and those in which they ought not, to acknowledge the power of parliament over them: but that, in the prosecution of his inquiries, he became fully convinced, that such a line doth not exist, and that there can be no medium between acknowledging and denying that power in all cases." He is certainly so far right, that there exists no known principle of law, which bounds the authority of the supreme power: And this is equally true, as hath been already observed, of subordinate legislatures, whether corporations within the realm or territorial assemblies without, which are only restrained by the nature of their inferiority. His views led him "to deny the legislative authority of the parliament over the colonies in every instance," as an infallible inference from what he deemed just premises. In what manner, however, or by what law, the emigrants, who were once subjects to the crown, and owed obedience to the English legislature, changed the nature of their allegiance, and became subjects of the person of the prince, similar to the Scots of former times, or to the Hanoverians of the present, we have not been told, nor is it easy to discover. Is it answered, "that emigration broke asunder the bonds of ancient connexion," it must, indeed, be admitted, that his conclusion was perfectly just; because, change of habitation must have transformed Englishmen into aliens, who, having no longer any relation to the state, owed no submission to her laws: And, the settlements which they formed, must have become, therefore, independent nations. Whether the conclusion beforementioned be consonant to the uniform declarations of the colonial charters, to the unvaried assertions of acknowledged facts, to the continual recognitions of assemblies, to the experience of ages, the foregoing annals will enable the reader to decide.

Nevertheless,

Nevertheleſs, it muſt be admitted, that ſeveral very ingenious writers, diſregarding the law of England as a dead letter, have endeavoured to eſtabliſh the rights of the colonies upon very different principles from thoſe of the preſent inquiry; upon "immutable truths," the "fitneſſes "of things," the "indefeaſible immunities of nature;" in order to draw the inference before-mentioned, that they were in no caſe bound to obey the rules of action preſcribed by the ſupreme legiſlature. But, of theſe authors, and their writings, however reſpectable, may be obſerved, what Monteſquieu remarked of Harrington, and his Oceana; "that, for want of knowing the nature of real liberty, he buſied himſelf in purſuit of an imaginary one; that he built a Chalcedon, though he had a Byzantium before his eyes." It ought to be permitted, to the friends of the conſtitution, to inſiſt with equal confidence in the forcible language of the excellent Burlamaqui: "That it is an inconteſtible maxim, that an opinion, which ſaps the foundation of all authority, which deſtroys all power, and conſequently all ſociety, cannot be admitted as a principle of reaſoning, or of conduct, in politics." —Prin. of Pol. Law. 2 v. 124.

THE END OF THE FIRST BOOK.

*** Owing to the diſtant reſidence of the author from the preſs, a few typographical errors have ſlipped in, which, as they affect propriety rather than injure the ſenſe, were deemed more worthy of apology than correction.

THE END OF THE FIRST BOOK.